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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

Estate of JOSEPH KOON LIM NG, Deceased.

THIEN YEW NG, et al.,
Petitioners and Appellants,
v.
CECILIA QUEE SIANG CHANG-NG,
Respondent and Cross-Appellant.

A134294 & A136951

(San Francisco County Super. Ct. Nos. PES-07-289787 & 08-472728)

In this probate proceeding, the five adult children (Ng Brothers) of decedent Joseph Koon Lim Ng (Joseph) challenge orders determining the disposition of certain real and personal property as between themselves and Joseph's second wife, Cecilia Quee Siang Chang-Ng (Cecilia).[1] Specifically, the Ng Brothers argue that the trial court erred by: (1) improperly effectuating an oral will; (2) wrongly concluding that two deeds executed by Joseph in 1997 were void for lack of delivery; (3) failing to recognize that Cecilia was estopped from asserting Joseph's 100 percent ownership interest in one of the rental properties at issue; (4) impermissibly requiring a swap of certain property interests between themselves and Cecilia; and (5) incorrectly determining the appropriate distribution of a certain investment account under California's Multiple-Party Accounts

[1] The parties to this proceeding bear the same surname. Thus, to avoid confusion—and meaning no disrespect—after a person is introduced, he or she may subsequently be referred to by first name.

Law, Probate Code section 5100 et seq.[2] For her part, Cecilia has filed a cross-appeal claiming that the deeds to five rental properties placing the Ng Brothers and various spouses on title were testamentary and therefore void for lack of delivery. She also asserts that certain unrecorded deeds, executed by Joseph in 1998, transmuted a number of the rental properties into joint tenancies between herself and Joseph. Having reviewed this matter in some detail, however, we see no reversible error in the trial court's exhaustive and thoughtful analysis of this sensitive family matter. We therefore affirm.

I. FACTS AND PROCEDURAL BACKGROUND[3]

Joseph died intestate on January 9, 2007, at the age of ninety-one. Joseph was married to his first wife, Pechin Ng (Pechin) for over 49 years, until her death in 1990. Joseph and Pechin had five sons. The eldest, Thien Yew Ng (T.Y.), is a retired anesthesiologist. Thien Koan Ng (T.K.), the couple's second son, is a retired attorney, accountant, and real estate investor. The third son, Thien Hwee Ng (Ronald), is an optometrist. Thein Saik Ng (David), the fourth son, is an emergency room physician. Finally, the youngest son, Thien Heng Ng (Daniel), is a dentist. At the time of his death, Joseph had been married to his second wife, Cecilia, for a little more than nine years.

In approximately 1967, Joseph moved to the United States with his three younger sons—Ronald, David, and Daniel—after liquidating his business as a holistic medicine practitioner in Burma. T.K. was already in the U.S., having emigrated from Burma in approximately 1963 to attend college. Finally, Pechin, T.Y., and Eng Ng (T.Y.'s wife or

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[2] All statutory references are to the Probate Code unless otherwise specified.

[3] In its Statement of Decision filed December 13, 2010 (Statement of Decision), the trial court in this case made extensive factual findings, the vast bulk of which are not contested by the parties on appeal. With respect to its fact finding, the trial court elaborated: "Unless otherwise stated, the Court makes all findings based on clear and convincing evidence. This means that the Court is convinced that it is highly probable that the fact is true. To the extent there is contrary relevant evidence, the Court has considered such evidence and found it to not be credible." We rely heavily on the Statement of Decision for our explication of the facts underlying this appeal, but will, of course, highlight any relevant areas of disagreement by the parties with the trial court's factual findings.

Eng Eng) emigrated in about 1968, and T.Y. completed his schooling in the United States.

With respect to the operation of the family finances, the trial court found as follows: "When the family moved to the United States, Joseph requested that his sons help him with his financial affairs. [Citations.] In accordance with Joseph's request, each of the five brothers regularly gave Joseph money. [Citations.] Joseph controlled all of the money. [Citations.] Joseph used the money to cover living expenses among other things. [Citation.] If Ronald, David, or Daniel needed money while living at home, Joseph would distribute funds to them. [Citations.] Joseph never gave money back to T.Y. or T.K. It is unclear how much each son actually gave to Joseph. [Citations.] It is likewise unclear how long the sons maintained the practice of sending money to their father. [Citations.] None of the sons provided any satisfactory documentary evidence as to the amounts and timing of their payments to Joseph in spite of the Court's request that this information be provided."

Joseph purchased a family home in San Francisco in 1968. Thereafter, beginning in 1971, Joseph acquired a number of rental properties in San Francisco, Burlingame, and Santa Maria, California. At trial, the Ng Brothers stated that the down payment for these investment properties came from a " 'pooled fund' " which "consisted of the money each son sent to their father and, later, income generated by the rental properties." The trial court, however, expressly rejected the Ng Brothers' factual claim that the funds were " 'pooled funds,' " concluding instead that "[t]hey were Joseph's funds."

Additionally, with respect to the rental properties, the trial court found that, while Joseph was alive, "he exercised total dominion and control over the properties and all of the income from the properties." Moreover, during the time that Joseph and Cecilia were married, they exercised total dominion and control over the properties and income together. In contrast, the Ng Brothers exercised no control over the rental properties, remained uninformed about their day to day management, and were not involved in decisions affecting the properties.

As stated above, Pechin died in 1990. In late 1996 or early 1997, Joseph met Cecilia through his cousin, Grace Koh. Joseph immediately told Grace that he was interested in marrying Cecilia. When the couple announced their plans to wed, Joseph was 81 years old and Cecilia was 45. Although the Ng Brothers suggested that Joseph and Cecilia enter into a prenuptial agreement, Joseph refused because neither he nor Cecilia wanted one.

Sometime thereafter, T.Y. arranged a meeting with an attorney, Helen Milowe, to discuss the state of the titles to the various family properties. Joseph did not participate, but directed T.Y. to confer with Ms. Milowe and gave him instructions for the meeting. In connection with this meeting evidence, the trial court expressly found that "Joseph was susceptible to persuasion and was known to make somewhat contradictory statements." The court further found "that it is more probable than not that T.Y. objected to Joseph marrying Cecilia without a prenuptial agreement and convinced him that he should consult Helen Milowe." Ultimately, at T.Y.'s request, Ms. Milowe prepared two deeds (1997 Deeds) adding the Ng Brothers to title for the family home and one of the rental properties. T.Y. had Joseph sign the 1997 Deeds on July 27, 1997, and subsequently had them recorded—one on September 24, 1997, the day that Joseph and Cecilia were married. With respect to the 1997 Deeds, the trial court specifically found as follows: "Joseph executed the deeds and recorded them with the separate express intention and understanding that all persons named as grantees in each deed except himself, Joseph Ng, would have no ownership in the property. The deeds were not to take effect until after Joseph's death. Joseph's intent in signing the deeds was testamentary as to all grantees except himself."

Finally, a little over a year after their marriage, on November 16, 18, and 19, 1998, Joseph and Cecilia made three separate trips to City Hall by bus to prepare deeds and record various documents. The deeds all added Cecilia as a joint tenant with respect to Joseph's interest in the various family properties (1998 Deeds). While Joseph executed all of the 1998 Deeds, only two were recorded—the deed for the family home and one for an Oakland property that is not in dispute in these proceedings (Oakland Property).

Later, in January 1999, Joseph delivered a number of the unrecorded 1998 Deeds in two envelopes to his youngest son, Daniel, with the direction to have the deeds signed by all the Ng Brothers and their respective wives and recorded. However, none of these deeds were ever returned to Joseph or recorded. After Joseph's death, Cecilia learned that these 1998 Deeds had never been recorded.

Although the trial court concluded that none of the unrecorded 1998 Deeds had the effect of transferring property, it found that the deeds evidenced Joseph's intent to "take care of Cecilia for the rest of her life." As the court noted: "[Each of the 1998 Deeds], regardless of recordation, was signed by Joseph and notarized. They all contain language indicating Joseph considered what was his to be Cecilia's as well. Joseph made three separate trips by bus to City Hall. He spent extended amounts of time preparing the fairly complex language of the deeds. He paid for a notary to stamp them. The Court finds that Joseph would not have gone through all this trouble unless he intended for Cecilia to be given a substantial interest in his property." In particular, the trial court concluded, based on the 1998 Deeds and other evidence of conversations at family meetings, that Joseph intended that Cecilia would receive a one-sixth interest in his total assets. Similarly, the trial court found that Joseph intended that each of his five sons would receive one-sixth of his total property.

A. History of Disputed Assets

At issue in this appeal is the ownership of seven parcels of California real property and an investment account held by UBS Financial Services, Inc. (UBS). All of the real and personal property at issue (Contested Assets) was held in various forms of joint ownership by Joseph and others—with the parties often changing over the years—a practice that was characterized in the trial court as a form of Chinese estate planning. Details regarding each of these Contested Assets are set forth below.

1. *The Second Avenue Property*

In 1968—about a year after he immigrated to the United States—Joseph purchased a family home located on Second Avenue in San Francisco (the Second Avenue Property). Specifically, by recorded deed dated March 6, 1968, third party grantors conveyed the Second Avenue Property to T.K., "a single man," and to Joseph, "a married man, as his separate property." Joseph made the down payment with funds he brought with him from Burma and money he had accumulated while living in the United States. T.K. committed to paying all of the expenses for the Second Avenue Property, including the mortgage and utilities, which he did for approximately ten years. Both men executed a contemporaneous deed of trust memorializing a $25,000 loan with respect to the Second Avenue Property.

Thereafter, on April 12, 1989, T.K. conveyed his interest in the Second Avenue Property to his parents, Joseph and Pechin, "Husband and Wife as tenants in common." A quitclaim deed memorializing this transaction was subsequently recorded. At this point, then, Joseph owned 75 percent of the Second Avenue Property and Pechin owned 25 percent, each as their separate property and as tenants in common. (See Fam. Code, § 770, subd. (a)(2).) Pechin died in April 1990. Although there was no formal probate of her estate, her portion of the Second Avenue Property passes one-third to Joseph and two-thirds to her five sons, in equal shares, under the laws of intestate succession. (§§ 6401, subd. (c)(3)(A), 6402, subd. (a).) This left Joseph owning five-sixths of the Second Avenue Property, while the Ng Brothers shared equally in the remaining one-sixth.

On July 27, 1997, in connection with his marriage to his second wife, Cecilia, Joseph conveyed his interest in the Second Avenue Property to himself and his five sons in joint tenancy, with rights of survivorship. Specifically, each grantee received a one-sixth undivided interest in the property as joint tenants under the recorded deed. Finally, on November 16, 1998, Joseph conveyed his interest in the Second Avenue Property to himself and Cecilia, "husband and wife, in joint tenancy." [4]

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[4] Although this 1998 deed describes Joseph as holding a one-sixth interest in the Second Avenue Property, it also conveys "all that real property situated in the City of San Francisco . . . described as follows." The trial court—noting that there was no scenario under which Joseph owned a one-sixth interest in the property at the time he executed the 1998 deed—concluded that the deed was operative to transfer whatever interest Joseph

2. *The 47th and 48th Avenue Properties*

In the early 1970's, Joseph purchased two rental properties in the City and County of San Francisco. The property on 47th Avenue was a four unit apartment (47th Avenue Property). The 48th Avenue property was a six-unit apartment (48th Avenue Property). The recorded deed for the 47th Avenue Property indicates that, on December 2, 1971, third party grantors conveyed the property to Joseph, Pechin, each of the Ng Brothers, and Eng Eng, "all as joint tenants." From the record, it appears that the grantees under the 1971 deed assumed a 1963 loan originally made to the third party grantors, which was secured by a deed of trust. Subsequently, the 1963 loan was repaid, and a full reconveyance was made and recorded on January 21, 1988. Similarly, pursuant to the recorded deed for the 48th Avenue Property, on May 30, 1973, third party grantors conveyed the property to Joseph, Pechin, each of the Ng Brothers, Eng Eng, Carol Ng (Carol or T.K.'s wife), and Kathy Ng (Kathy or David's wife), "all in joint tenancy." At the time of closing, all of the Ng grantees executed a deed of trust to secure a $60,000 loan to complete the acquisition.

Subsequently, on November 19, 1998, Joseph executed and had notarized deeds granting him, Cecilia, the Ng Brothers and the Ng Brothers' wives six joint tenancies between each husband and wife pair as to one-sixth interests in each of the 47th Avenue Property and the 48th Avenue Property.[5] Both deeds included signature blocks for all of the grantors, but were only executed by Joseph. Neither deed was ever recorded.

3. *The 481 Rollins Road Property*

In 1983, Joseph purchased a rental property located at 481-483 Rollins Road in Burlingame (481 Rollins Road Property). Specifically, by recorded deed dated April 22, 1983, a third party grantor conveyed the 481 Rollins Road Property to Joseph, Pechin, David, and T.Y., "all as Joint Tenants." At closing, the four Ng grantees signed a deed of trust to secure a $98,000 loan used to complete the acquisition. Several months later, the

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had in the Second Avenue Property at the time of the conveyance, even if it was greater than a one-sixth interest. This determination has not been challenged on appeal.

[5] T.K. was granted his one-sixth interest in the 47th Avenue Property as "a single man."

four original Ng grantees by recorded deed conveyed the 481 Rollins Road Property to themselves plus Ronald and Daniel, "all as joint tenants." Then, in August 1987, "for love and affection," Joseph and Pechin conveyed their interest in the 481 Rollins Road Property to themselves, T.Y. and his wife, Ronald and his wife Sylvia Ng (Sylvia or Ronald's wife), David and his wife, and Daniel (who was then unmarried), "All As Joint Tenants." This deed was also recorded.

Finally, on November 19, 1998, Joseph executed and had notarized a deed granting him, Cecilia, T.Y. and his wife, Ronald and his wife, David and his wife, and Daniel and his wife Priscilla Lam Ng (Priscilla or Daniel's wife), five joint tenancies between each husband and wife pair as to one-fifth interests in the 481 Rollins Road Property. The deed included signature blocks for all of the grantors, but was only executed by Joseph. It was not recorded.

4. *The 451 Rollins Road Property*

Joseph and Pechin purchased a rental property located at 451-453 Rollins Road in Burlingame (451 Rollins Road Property) in 1985. Specifically, by recorded deed dated May 14, 1985, third party grantors conveyed the 451 Rollins Road Property to Joseph and Pechin, "husband & wife as Joint Tenants." In connection with the closing, Joseph and Pechin signed a deed of trust to secure a $61,000 loan with respect to the 451 Rollins Road Property.

After Pechin's death in 1990, and in connection with his marriage to his second wife, Cecilia, Joseph executed an Affidavit of Death of Joint Tenant on July 27, 1997, which was subsequently recorded. On that same date, Joseph conveyed his interest in the 451 Rollins Road Property to himself and his five sons in joint tenancy, with rights of survivorship. Specifically, each grantee received a one-sixth undivided interest in the property as joint tenants under the recorded deed. Finally, on November 18, 1998, Joseph executed and had notarized a deed granting him and Cecilia, T.Y. and his wife, Ronald and his wife, David and his wife, Daniel and his wife, and T.K. six joint tenancies between each husband and wife pair as to one-sixth interests in the 451 Rollins Road

Property. The deed, however, was not recorded. Interestingly, it did not include signature blocks for any grantor other than Joseph.

5. *The Boone Property and the Hampton Property*

In 1987 and 1988, Joseph purchased two rental properties in Santa Maria, California—one located at 721 East Boone Street (Boone Property) and the other located at 3120 Hampton Avenue (Hampton Property). Reportedly, Ronald and Daniel lived in the area at that time, having set up their optometry and dental practices there. The first recorded deed for the Boone Property indicates that, on May 22, 1987, a third party grantor conveyed the Boone Property to Joseph, Pechin, David, and David's wife, "all as joint tenants." In connection with the closing, all four Ng grantees signed a deed of trust to secure a $88,000 loan with respect to the Boone Property. Shortly thereafter, by recorded deed dated August 12, 1987, the four original Ng grantees conveyed the Boone Property to themselves plus T.Y., Eng Eng, Ronald, Ronald's wife, and Daniel. Then, on November 19, 1998, Joseph executed and had notarized a deed granting him, Cecilia, T.Y. and his wife, Ronald and his wife, David and his wife, and Daniel and his wife five joint tenancies between each husband and wife pair as to one-fifth interests in the Boone Property. The deed included signature blocks for all of the grantors, but was only executed by Joseph. It was not recorded.

With respect to the Hampton Property, on July 5, 1988, third party grantors conveyed it to Joseph and Pechin, T.Y. and Eng Eng, Ronald and Sylvia, David and Kathy, and Daniel, "all as Joint Tenants." The deed was subsequently recorded. On December 2, 1998, all of the then-living original Ng grantees, along with Cecilia and Daniel's then-wife, executed a deed of trust to secure a $70,000 loan with respect to the Hampton Property. Joseph signed on behalf of everyone except Cecilia. According to the Statement of Decision, it is believed that this was a refinancing of an earlier loan used to acquire the Hampton Property.

6. *The UBS Account*

The parties to these proceedings stipulated that the UBS investment account at issue was initially opened at Paine Webber in 1996 (UBS Account). Paine Webber subsequently became UBS. The UBS Account was held jointly by Joseph and T.Y. UBS, unfortunately, has lost the account opening documents for the UBS Account and therefore cannot determine its exact legal character. However, the account statements from both Paine Webber and UBS with respect to the UBS account were mailed to "JOSEPH KOON LIM NG/ THIEN YEW NG JT TEN." The parties agree that the only money deposited in the UBS Account was income from the real properties at issue in these proceedings, along with any interest or dividends generated. In June 2008, after Joseph's death, all of the proceeds from the UBS Account were deposited with the trial court after an interpleader action was filed with the court by UBS—*UBS Financial Services, Inc. v. Thien Yew Ng, et al.*, (Super. Ct. S.F. City and County, 2008, No. CGC-08-472728)—and ultimately consolidated with these proceedings. The total amount deposited with the trial court was $518,943.00.

B. Proceedings in Trial Court

On March 13, 2007, shortly after Joseph's death, David and Daniel petitioned the San Francisco Superior Court for Letters of Administration with authorization to administer Joseph's estate under the Independent Administration of Estates Act (the Probate Action). On April 11, 2007, the probate court issued an order appointing David and Daniel as administrators of the estate. Cecilia did not object to the appointment, but, at her request, the probate court required a $250,000 bond, which David and Daniel subsequently obtained. Letters of Administration were issued to David and Daniel on April 20, 2007.

Thereafter, Cecilia and T.Y. filed competing petitions in the Probate Action, T.Y.'s Second Amended Petition to Determine Ownership of Property (the Ownership Petition) and Cecilia's Amended Petition to Determine Persons Entitled to Distribution of Estate (Distribution Petition). The Distribution Petition—initially filed by Cecilia on February 19, 2009, and amended on July 7, 2009—argued that there was property in Joseph's probate estate and that Cecilia was entitled to a distribution from that probate estate.[6] In particular, it noted a dispute between Cecilia and the Ng brothers "concerning the extent and nature of decedent's ownership" of the Contested Assets at his death and "concerning the persons entitled to distribution, and more specifically, the surviving wife's right to a distributive share." The Distribution Petition requested the trial court to "make an order determining petitioner's entitlement to a distributive share of the decedent's estate under Probate Code sections 6400 and 6401, or sections 21610 *et seq.* or such other sections as the Court may determine, and specifically petitioner's share of each of the [Contested Assets] or the estate[.]"

In contrast, the Ownership Petition—initially filed by T.Y. on March 25, 2009, and filed as a second amended petition on June 12, 2009—asserted that none of Joseph's property was a part of his probate estate and asked the trial court to determine the proper ownership of the Contested Assets that did not include Cecilia on title.[7] According to T.Y., since all of these particular assets were held jointly by Joseph with persons other than Cecilia, at the time of Joseph's death they "immediately passed by operation of law to the other holders of joint title, which did not include Cecilia." T.Y. also contested Cecilia's claims with respect to the Second Avenue Property—where she was included on title—arguing that it also was held in joint ownership and thus was not a part of Joseph's estate. The Ownership Petition sought a court determination that none of the Contested Assets belonged in Joseph's estate; a finding that Cecilia had no interest in the properties where she was not included on title; and "such other orders as the Court considers proper."

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[6] The Distribution Petition was filed pursuant to section 11700, which allows "any person claiming to be a beneficiary" to request "a court determination of the persons entitled to distribution of the decedent's estate."

[7] The Ownership Petition was filed pursuant to section 850, which authorizes a personal representative or any interested person to file a petition where, among other things, "the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another" or "the decedent died having a claim to real or personal property, title to or possession of which is held by another." (§ 850, subd. (a)(2)(C) & (D).)

The trial in this matter began on October 15, 2009, spanned thirty-two days, and included sixteen witnesses. At the conclusion of the trial, the parties submitted proposed statements of decision. Thereafter, the court issued a Tentative Statement of Decision on March 9, 2010. The trial court then considered objections and requests for modification, obtained supplemental briefing from the parties on various issues, and conducted a further hearing on May 7, 2010. Specifically included within these post-trial discussions was the issue of whether the trial court should assume probate jurisdiction for Joseph's estate so that a final resolution with respect to all assets and all issues could be effected in one proceeding. The trial court subsequently determined that it would act under probate jurisdiction so as to distribute all assets. Ultimately—after several additional hearings and further filings—on December 13, 2010, the trial court issued its 136-page Statement of Decision, resolving the parties competing claims to the Contested Assets.[8]

Subsequent to the trial court's December 2010 Statement of Decision, the parties continued to litigate regarding the administration of the probate estate and exactly how the distribution of the Contested Assets should be effectuated in accordance with the trial court's ruling. For instance, a referee was appointed to resolve a series of issues with respect to unauthorized withdrawals and accounting questions involving several bank accounts, and numerous objections to the referee's reports were lodged by the parties and resolved by the trial court. In addition, after "someone" provided information to the Internal Revenue Service (IRS) about Joseph's estate, the IRS reopened the estate's federal tax return, despite having previously issued an estate tax closing letter. Counsel for the administrators was ultimately able to convince the IRS not to impose over

[8] As one might expect in such a lengthy Statement of Decision, prepared after an extensive trial and multiple post-trial hearings, there are some internal inconsistencies in the document. For example, the trial court speaks at times of "declining to rule" on the deeds for certain of the rental properties, but clearly decided later to reach the issue of delivery with respect to those deeds, while failing to delete the previous references. We will read the Statement of Decision in a commonsense manner, cognizant of the legal conclusions actually made by the trial court. Where there are inconsistencies, we will interpret the Statement of Decision in a manner calculated to support the trial court's ultimate findings.

$900,000 in additional taxes and penalties on the estate. Then, by orders dated November 9 and 15, 2011, the trial court suggested that the Ng Brothers' one-sixth interest in the Second Avenue Property be exchanged for Cecilia's one-third interest in the 451 Rollins Road Property, plus a cash payment. This would give the Ng Brothers a 100 percent interest in the 451 Rollins Road Property and Cecilia a 100 percent interest in the Second Avenue Property. The court set forth a possible procedure for this property swap and asked for any objections.

In addition, the trial court awarded Cecilia a family allowance—$130,500 for past-due amounts and $2,250 for each subsequent month.[9] The court also considered Cecilia's petition to remove David and Daniel as administrators of Joseph's estate. It concluded that, due to the appointment of the referee and the court's issuance of various protective orders, there was little for a new administrator left to do. However, it reserved jurisdiction to remove the administrators should an appeal materially change the circumstances of the estate. Finally, on December 23, 2011, the trial court issued an order (Distribution Order) reporting the results of appraisals for the Second Avenue Property and the 451 Rollins Road Property and effecting the property exchange discussed above. The Distribution Order also required the administrators, David and Daniel, to turn over certain rental funds not previously under the court's control; allocated estate expenses among the parties; and set forth a revised distribution schedule and procedures for distribution of the funds from the UBS Account. T.Y., David, and Daniel filed a timely notice of appeal from the Distribution Order.

Given the complicated nature of the post-trial litigation in this matter, the trial court issued an Explanation of Events and Orders After Issuance of Statement of Decision on October 5, 2012, reviewing the status of the proceedings and many of the

[9] T.Y., David, and Daniel's initial notice of appeal contested, among other things, the trial court's order granting Cecilia's petition for a family allowance. However, appellants subsequently requested dismissal of their appeal to the extent it involved the family allowance issue, and this court granted the partial dismissal request by order dated October 24, 2012. Given these circumstances, we do not here consider the propriety of the family allowance.

above-described actions. On that same day, the trial court issued its Final Judgment (Final Judgment). This 40-page document sets forth the trial court's basis for ordering the property exchange involving the Second Avenue Property and the 451 Rollins Road Property; the details regarding title with respect to each parcel of real property at issue; the disposition of all of the challenged bank accounts; the treatment of estate expenses; and the procedure for final distribution of all of the assets at issue. T.Y., David, and Daniel filed a timely notice of appeal from the Final Judgment. Cecilia then filed a cross-appeal from the Final Judgment. The various appellate matters involving the Contested Assets were subsequently consolidated by this court on December 19, 2012, bringing before us many of the distribution issues previously grappled with by the trial court.[10]

II. DISCUSSION

A. Testamentary Nature of the Deeds

1. *Legal Framework and Standard of Review*

Pursuant to Civil Code section 1054, a grant of property "takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor." On appeal, both the Ng Brothers and Cecilia challenge the trial court's conclusions with respect to the delivery of a number of the many deeds executed by Joseph during his lifetime. Specifically, the Ng Brothers argue that the trial court erroneously found the 1997 Deeds void for lack of delivery. And, in her cross-appeal, Cecilia contends that many of the deeds placing the Ng Brothers and their wives on title in connection with the acquisition of the rental properties should have been found void for lack of delivery, despite the trial

[10] T.Y., David, and Daniel participated in the proceedings before the trial court and filed timely notices of appeal from, among other things, the trial court's Distribution Order and its Final Judgment. The other two brothers—Ronald and T.K.—along with Sylvia, Eng Eng, Pricilla, Kathy (individually and as trustee of the David and Katherine Ng Family Trust (Trust)), and David as trustee of the Trust, all filed a notice of appeal from the trial court's Final Judgment as affected third-parties. "The failure of a beneficiary who is aggrieved by the order to participate in the probate proceeding below does not deprive the beneficiary of the right to appeal from the order." (*Estate of Zabriskie* (1979) 96 Cal.App.3d 571, 575.) Cecilia does not challenge the inclusion of these additional family members as parties to this appeal. For ease of reference, we refer to the appellants generally as the Ng Brothers.

court's conclusion to the contrary. Since the question of delivery is central to many of the numerous distribution decisions here at issue, we review the relevant law in some detail.

"[T]o constitute a valid delivery there must exist a mutual intention on the part of the parties, and particularly on the part of the grantor, to pass title to the property immediately. In other words, to be a valid delivery, the instrument must be meant by the grantor to be presently operative as a deed, that is, there must be the intent on the part of the grantor to divest himself presently of the title." (*Henneberry v. Henneberry* (1958) 164 Cal.App.2d 125, 129 (*Henneberry*).) The key issue is the grantor's intent. (*Perry v. Wallner* (1962) 206 Cal.App.2d 218, 221 (*Perry*).) As our Supreme Court clarified over a century ago: " '[A] valid delivery [of a deed] is accomplished when the conduct and acts of a grantor manifest a present intent to dispose of the title conveyed by the deed. No particular form of delivery is necessary; but any act or thing which manifests such an intent is sufficient to establish it.' . . . [However,] the transfer of possession must be with the intent of presently passing title, and must not be hampered by the reservation of any right of revocation or recall." (*Follmer v. Rohrer* (1910) 158 Cal. 755, 757-758 (*Follmer*); see also *Danenberg v. O'Connor* (1961) 195 Cal.App.2d 194, 201-202.) A deed that is not validly delivered is void and completely ineffective. (*Bank of Healdsburg v. Bailhache* (1884) 65 Cal. 327, 328; see also *Meyer v. Wall* (1969) 270 Cal.App.2d 24, 27 (*Meyer*); 3 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 8.41, p. 8-112.) It follows from these general principles that "[e]ven if the document is manually delivered, but the evidence shows that the parties or the grantor intended the document to become operative only upon death, the document is testamentary in character and void as a deed." (*Gonzales v. Gonzales* (1968) 267 Cal.App.2d 428, 435-436 (*Gonzales*).)

The determination of whether the grantor intended to be immediately divested of title—and therefore delivered the deed—is a question of fact to be determined by the trial court from a consideration of all the evidence. (*Perry, supra,* 206 Cal.App.2d at p. 221.) Both statutory and case law provide a number of presumptions with respect to various circumstances bearing on the question of delivery. For instance, recordation of a deed creates a rebuttable presumption of valid delivery. (See Evid. Code, § 1600; *Butler v. Butler* (1961) 188 Cal.App.2d 228, 233 (*Butler*) ["recordation at the request of the grantor constitutes prima facie evidence of delivery with intent presently to convey the interest set forth in the deed"].) Similarly, possession of an executed deed by a grantee creates an inference of legal delivery. (*Blackburn v. Drake* (1963) 211 Cal.App.2d 806, 811-812 (*Blackburn*).) In contrast, the failure to record a deed prior to the grantor's death does not preclude a finding of delivery; it is simply one circumstance to be taken into account in determining whether the grantor intended the deed to be presently operative. (*Gonzales*, *supra*, 267 Cal.App.2d at p. 436 & fn. 7.)

Moreover, if delivery is otherwise established, the grantee's title is not vitiated by the grantor's collection of rent on the property or continued residence on the property. (*Knudson v. Adams* (1934) 137 Cal.App. 261, 269; *Drummond v. Drummond* (1940) 39 Cal.App.2d 418, 424). However, although the grantor's continued exercise of dominion over the property will not negate delivery as a matter of law, it is a circumstance to be considered in determining whether the deed was delivered. (*Meyer*, *supra*, 270 Cal.App.2d at p. 29.) Similarly, consideration is clearly not required for the valid delivery of a deed. (*Patterson v. Davis* (1953) 121 Cal.App.2d 152, 160; see also Civ. Code, § 1040.) But, courts have considered a total lack of consideration as a factor that can support a finding of nondelivery. (See *Priest v. Bell* (1954) 123 Cal.App.2d 528 (*Priest*) [the fact that a son influenced his mother to execute a deed without any valuable or other consideration supports the trial court's finding of nondelivery]; *Mademann v. Sexauer* (1953) 117 Cal.App.2d 400, 401-403 (*Mademann*) [trial court's finding, affirmed by the appellate court, that deeds were testamentary based, in part, on fact that no consideration was given for the deeds].)

Importantly, when attempting to determine the intent of a grantor on the issue of delivery, if "the circumstances surrounding the alleged delivery are ambiguous or equivocal on the matter of intention, the grantor's subsequent acts and declarations may be examined to determine whether the grantor still regarded the property as his or her own." (12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 294, p. 350.)

In fact, under such circumstances, a grantor's statements of intent are admissible over objection on hearsay grounds: " 'When intent is a material element of a disputed fact, declarations of a decedent made after as well as before an alleged act that indicate the intent with which he performed the act are admissible in evidence as an exception to the hearsay rule, and it is immaterial that such declarations are self-serving. Thus, in cases involving the delivery of deeds, declarations of the alleged grantor made before and after the making of the deed are admissible upon the issue of delivery, and it is immaterial that such declarations are in the interest of the party producing them.' " (*Dinneen v. Younger* (1943) 57 Cal.App.2d 200, 207 (*Dinneen*).) Evidence of a grantor's understanding of the process can be critical in determining the issue of delivery, at times even trumping the general operation of law. Indeed, "[a] grantor may be mistaken as to the legal effect of the deed, believing that some further act, such as acknowledgment or recordation is necessary before it becomes a completed act. In such cases, because the grantor had no intent to make a present and immediate conveyance, there is no delivery until the subsequent act is performed." (3 Miller & Starr, Cal. Real Estate, *supra*, § 8.41, p. 8-116; see *Hotaling v. Hotaling* (1924) 193 Cal. 368, 383-384 (*Hotaling*).)

Finally, the conduct of the grantees is also relevant to a determination as to whether a valid delivery has occurred. Specifically, "[w]hen a grantor *or a grantee* subsequently deals with the property in a manner inconsistent with the theory of an effective delivery, such fact is of considerable importance in determining their probable intent." (*Dinneen supra*, 57 Cal.App.2d at p. 207, italics added.) And, in the context of attempted testamentary transfers, if "the evidence shows that *the parties* or the grantor *intended* the document to become operative only upon death, the document is testamentary in character and void as a deed." (*Gonzales*, *supra*, 267 Cal.App.2d at pp. 435-436, italics added.)

Ultimately, "[b]ecause the issue of the legal delivery of the instrument is factual, none of the factors that bear on the issue is conclusive. Each must be weighed in view of all the other matters relevant to the final determination of the question. The inferences and presumptions regarding the delivery of the instrument are rebuttable and may be overcome by contrary evidence." (3 Miller & Starr, Cal. Real Estate, *supra*, § 8.42, p. 8-118.) Indeed, "[b]ecause no one factor is determinative, delivery has been found even though there may have been circumstances that would indicate to the contrary." (*Id.* at p. 8-121.)

Moreover, since, as stated above, the determination of whether the grantor intended to be immediately divested of title—and therefore delivered the deed—is a question of fact to be determined by the trial court from a consideration of all the evidence (*Perry, supra*, 206 Cal.App.2d at p. 221), "[w]here there is substantial evidence, or where an inference or presumption may be drawn from the evidence to sustain the court's finding of delivery or nondelivery, the finding will not be disturbed on appeal." (*Ibid.*; see *Luna v. Brownell* (2010) 185 Cal.App.4th 668, 673; *Gonzales*, *supra*, 267 Cal.App.2d at pp. 431, 436.) The inherent limitations on our review for substantial evidence are well known and easily delineated. "[W]hen a finding of fact is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court is limited to the determination of whether there is *any* substantial evidence, contradicted or uncontradicted, which supports the finding of fact." (*Gonzales*, *supra*, 267 Cal.App.2d at p. 431, italics added.) "Moreover, when two or more inferences can reasonably be drawn from the facts, a reviewing court is not empowered to substitute its deductions for those of the trial court." (*Ibid.*) And, "[t]he determination of the credibility of each witness and the weight to be given to his or her testimony is within the exclusive province of the trial judge as the trier of fact." (*Id.* at p. 432)

In addition, when making a factual determination, "[t]he trier of fact 'properly may reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected available material.' " (*Gonzales*, *supra*, 267 Cal.App.2d at p. 432.) This is particularly relevant when, as here, the trial court's factual conclusion is based on a consideration of the totality of the circumstances specific to the case. In such a situation, a party raising a substantial evidence challenge on appeal faces a daunting task. Indeed, in discussing the application of the substantial evidence rule to the issue of delivery of a deed, Witkin has stated: "*If the evidence is conflicting, delivery is almost conclusively determined in the trial court; as in other controversies of a predominantly factual character, the reviewing court will not weigh the evidence, and will affirm the judgment although the preponderance appears to favor the appellant*." (12 Witkin, Summary of Cal. Law, *supra*, Real Property, § 296, p. 353, italics added.) Cognizant of our extremely limited role when reviewing a finding of delivery or nondelivery, we turn to the specific allegations in this case.

2. *The Second Avenue Property*

We will first consider the issue of delivery as it relates to the 1997 Deed executed in connection with the Second Avenue Property. As described in detail above, the Second Avenue Property is the family residence and was originally held by Joseph and T.K. as joint tenants. Prior to Pechin's death, T.K. deeded his interest in the property to his parents. Thereafter, in July 1997 and in anticipation of his marriage to Cecilia, Joseph executed a deed purporting to convey his interest in the Second Avenue Property to himself and his five sons in joint tenancy, with rights of survivorship.

In its Statement of Decision, the trial court acknowledged that the execution, notarization, and recordation of the 1997 Deed for the Second Avenue Property, along with T.Y.'s subsequent possession of that deed, created a presumption of valid delivery. (See Evid. Code, § 1600; *Blackburn*, *supra*, 211 Cal.App.2d at pp. 811-812; *Butler*, *supra*, 188 Cal.App.2d at p. 233.) It concluded, however, that Cecilia could rebut this presumption by providing evidence that Joseph intended the grant deed to take effect only after his death, thereby making the conveyance void as an " 'attempted testamentary disposition.' " (See *Blackburn*, *supra*, 211 Cal.App.2d at p. 811.) After considering the surrounding facts and circumstances, the trial court determined that Cecilia had in fact rebutted the presumption of delivery. Specifically, the court found by clear and convincing evidence that Joseph did not intend the 1997 Deed for the Second Avenue Property to take effect until after his death. The deed, being testamentary in nature, was therefore void. According to the trial court, its factual finding of nondelivery was based on trial testimony, the court's evaluation of witness demeanor, and documentary evidence.

In particular, when reaching its decision with respect to delivery, the trial court noted the similarities in this case to the situation in *Priest*, *supra*, 123 Cal.App.2d 528. In that case, a property-owning mother was informed by her children that she should deed the property to them to avoid the expense of probate. The mother stated that she wanted the children to have the property in the event of her death. It was understood that one son, Antone, was to make the arrangements for the deed. (*Id.* at p. 529.) Thereafter, Antone, his mother, and at least one other child went to a notary public's office and instructed the notary to draw a gift deed from the mother to the children. Antone recorded the deed three days later, although the mother paid for its preparation. (*Ibid.*) After the deed was recorded, the mother "paid the taxes and insurance on the property and had complete control of it." (*Id.* at pp. 529-530.) She also subsequently reiterated that "she had wanted the deed to be effective only when she died, that as long as she lived the property was to be her home." (*Id.* at p. 530.) On these facts, the trial court found, among other things, that "Antone influenced his mother to execute her deed without any valuable or other consideration; that she was under his influence; [and] that she signed and acknowledged it for the purpose of avoiding probate proceedings and with the intention that it would not be presently operative but that the title to the property would remain in her and vest in the children after her death." (*Ibid.*) The appellate court concluded that "[a]ll of the evidence," other than the presumption of delivery based on the grantee's possession of the deed, supported the trial court's finding that the deed was not validly delivered. (*Id.* at pp. 529-532.)

Like the situation in *Priest*, in this case the deed at issue was "prepared, executed, acknowledged, and recorded at the urging of [Joseph's] eldest son T.Y., upon his learning that his father was engaged to marry a significantly younger woman." Moreover, the trial court expressly found that Joseph was susceptible to persuasion. Further, the conveyance was made for no consideration and T.Y., rather than Joseph, requested that the deed be recorded. According to the trial court, the fact that T.Y. was the one who recorded the deed "significantly reduce[d] its evidentiary value with respect to [Joseph's] intent to presently convey any interests by that deed." In addition, after executing the 1997 Deed with respect to the Second Avenue Property, Cecilia and Joseph were the only occupants of the property; the Ng Brothers did not demand that Joseph or Cecilia pay rent; and the Ng Brothers did not pay any expenses with respect to the maintenance or ownership of the property. According to the trial court, this conduct by the Ng Brothers in failing to exercise any "dominion or control" over the Second Avenue Property prior to their father's death indicated that "it was mutually understood that [Joseph] did not intend to convey a present interest in the Second Avenue Property by the 1997 deed." (See *Henneberry*, *supra*, 164 Cal.App.2d at p. 129; *Dinneen*, *supra*, 57 Cal.App.2d at p. 207 [fact that grantee subsequently deals with property in a manner inconsistent with effective delivery is of "considerable importance" in determining intent]; see also *Meyer, supra*, 270 Cal.App.2d at p. 29 [grantor's continued exercise of dominion over the property is a circumstance to be considered in determining whether the deed was delivered].)

Finally, the court highlighted several representations made by Joseph which tended to support the conclusion that he considered himself the full owner of the Second Avenue Property. At a family meeting on May 28, 2005, which was attended by Joseph, Cecilia, and all of the Ng Brothers other than T.K., Joseph stated that the Second Avenue Property "was to be used as a home and not a rental property, that the sons were not to 'ask for any share,' and that Cecilia was to live in it for the rest of her life." According to the trial court, this statement showed that Joseph never intended his sons to possess the Second Avenue Property until after his death, at which point he wished Cecilia to be granted a life estate. The court further pointed out that it would have been "unnatural" for Joseph to consent to a transfer that would have effectively dispossessed his "unemployed middle-aged bride" from the marital home, as Cecilia was highly likely to outlive him. Joseph also told both Cecilia and Betty Ohg Chan, Cecilia's sister, that he was the full owner of his various properties and that the Second Avenue Property was Cecilia's to live in for the rest of her life. As the trial court observed: "Since delivery concerns the transferor's subjective intent with respect to the passage of title, if Joseph considered himself to be the full owner (legal and beneficial) of the properties in later years he could not have considered himself to have presently divested himself of title when he signed the 1997 deed." Although the many facts and circumstances identified by the trial court in support of its nondelivery finding are perhaps not all equally persuasive, we believe that the trial court's analysis, along with the its implied assessment of the credibility of the various witnesses, discloses sufficiently substantial evidence to support its finding of nondelivery with respect to the 1997 Deed for the Second Avenue Property.

However, in an attempt to undercut the trial court's factual finding that no delivery occurred with respect to the 1997 Deed for the Second Avenue Property, the Ng Brothers argue that the trial court relied on a number of legally irrelevant facts in order to achieve its desired result—the grant of one-sixth of Joseph's total assets to Cecilia in accord with Joseph's professed intent. We discuss Joseph's testamentary desires and their relevance to the trial court's actions later in this opinion. To the extent the Ng Brothers point to factors addressed by the trial court that they believe do not support a finding of nondelivery, we either disagree or conclude that, even if the questionable factors cut in favor of delivery rather than nondelivery, substantial evidence would still support the trial court's finding. (See 12 Witkin, Summary of Cal. Law, *supra*, Real Property, § 296, p. 353 ["[i]f the evidence is conflicting, delivery is almost conclusively determined in the trial court; as in other controversies of a predominantly factual character, the reviewing court will not weigh the evidence, and will affirm the judgment *although the preponderance appears to favor the appellant*," italics added.])

Thus, for example, the Ng Brothers argue that the trial court should not have deemed the lack of consideration for the 1997 Deed to be a factor supporting nondelivery, because consideration is not essential to the validity of a deed. (See *Odone v. Marzocchi* (1949) 34 Cal.2d 431, 436.) We simply disagree. While it is true that consideration is not required to create a valid deed, its presence or absence in a particular situation is clearly a circumstance that can bear on the issue of delivery. (See, e.g., *Priest*, *supra*, 123 Cal.App.2d at pp. 530-532; *Mademann*, *supra*, 117 Cal.App.2d at pp. 401-403.) Indeed, the Ng Brothers, themselves, argue with respect to certain deeds to the rental properties discussed below, that the brothers' assumption of liability in connection with the purchase of those properties supports the trial court's finding of delivery. Nor are we convinced by the Ng Brothers' argument that, even if potentially relevant, lack of consideration was unimportant in this case because there is no evidence that Joseph expected or wanted his sons to pay him for any of their interests in his properties. Here, the trial court clearly believed a lack of consideration was important in the context of the 1997 Deeds, which were drafted, executed, and recorded at the urging of T.Y. rather than on Joseph's own initiative. This is a reasonable inference from the evidence presented and we will not here reweigh that evidence or substitute our deductions for those of the trial court. (See *Gonzales*, *supra*, 267 Cal.App.2d at p. 431.)

In a related vein, the Ng Brothers challenge the trial court's suggestion, citing *Sparks v. Mendoza* (1948) 83 Cal.App.2d 511, 514 (*Sparks*), that "[t]he lack of consideration is also relevant to the question of delivery because it implicates a presumption of undue influence and fraud." In *Sparks*, the appellate court held that "[w]here the relationship between the parties is that of parent and child and the parent relies on the child for advice in business matters, a gift *inter vivos*, from the parent to the child which is without consideration and where the parent does not have independent advice, is presumed to be fraudulent and to have been made under undue influence." (*Id.* at p. 514.) Here, the Ng Brothers argue that there is no evidence that Joseph relied on or even consulted his sons for business advice and that the trial court never made a finding that T.Y. exerted undue influence over Joseph in having him execute the 1997 Deeds. It is true that the trial court declined to actually rule on the issue of whether the 1997 Deeds were fraudulent or the product of undue influence—a finding which, in and of itself, would have negated delivery, as it undercuts the ability of a grantor to have a true, present intention to convey the property at issue. (*Id.* at pp. 514-515.) However, while Joseph generally managed his business affairs on his own, in this particular instance, T.Y. acted as his agent and spearheaded the creation, execution, and recordation of the 1997 Deeds. Moreover, the trial court expressly found, in connection with these 1997 transactions, that Joseph was "subject to persuasion" and that it was "more probable than not" that T.Y. "convinced [Joseph] that he should consult Helen Milowe." Under such circumstances, the creation of the 1997 Deeds was remarkable precisely because it was outside of Joseph's normal business practice. In addition, given the lack of consideration and the parent-child relationship between Joseph and T.Y., we believe that, as the trial court put it, the evidence "implicates a presumption of undue influence and fraud," and that this was a matter properly considered by the trial court, even if no ultimate finding of undue influence was ever made.

Further, according to the Ng Brothers, the trial court improperly relied on the fact that, as a result of the 1997 Deed, the Second Avenue Property was not subject to transfer taxation, property tax assessment, or gift tax. The brothers point out that documentary transfer taxes are only imposed when the consideration for the conveyance exceeds $100 (Rev. & Tax. Code, § 11911), and that no reassessment is triggered for conveyances from parent to child, or from a grantor to himself and others in joint tenancy (*Id*., §§ 62, subd. (f) & 63.1, subd. (a)(1)(A)). With respect to gift tax, the Ng Brothers assert that the brothers had no reason to file a gift tax return upon Joseph's death because they asserted at that time that they had contributed to the purchase price of the properties, a position that was not rejected until several years later in the trial court's December 2010 Statement of Decision. We note that the trial court stated that the fact that no transfer tax was paid supported its finding regarding the absence of consideration, a relevant matter as stated above. However, even if the absence of taxation and reassessment in this case does not cut in favor of nondelivery, substantial evidence still exists supporting the trial court's nondelivery finding.

Next, the trial court noted that, in a letter to T.Y. drafted by attorney Milowe in connection with the preparation of the 1997 Deeds, she stated that "it was the common practice for [Joseph] to place the sons on title to 'ensure the transfer of property to the younger generation of [sic] their deaths.' " The trial court saw this statement as further evidence that T.Y. understood that "it was his father's intention to convey interests that would become effective only upon his death." The Ng Brothers, in contrast, argue that

Milowe's statement did not mean that the 1997 Deeds were not intended to have immediate effect and were therefore testamentary. Instead, they claim that Milowe was only explaining that joint tenancy deeds are frequently used as a completely proper means of avoiding probate. Under the circumstances, both the trial court's interpretation and the inference drawn by the Ng brothers are reasonable. Indeed, if asked to choose, we might very well find the Ng Brothers' position on this question to be the more likely. As stressed above, though, we will not substitute our deductions for those of the trial court. (*Gonzales*, *supra*, 267 Cal.App.2d at p. 431.) And, even if this evidence was disregarded entirely, we believe substantial evidence still exists supporting the trial court's finding.

Finally, the Ng Brothers offer alternate explanations for Joseph's statements later in life regarding his ownership of his properties. With respect to Joseph's claims that he owned 100 percent of the properties, the Ng Brothers assert that Joseph knew he was not full owner of the properties and his statements to the contrary merely manifested his belief that his sons would honor his wishes and do what they were told with respect to the properties. As for the statement that the Ng Brothers were not to " 'ask for any share' " of the Second Avenue Property and that Cecilia was to live in it for the rest of her life, the brothers argue that there would have been no reason to instruct them in this way if Joseph believed himself full owner of the property. Instead, they posit that Joseph, in making this statement, was "appealing to his sons to honor his wishes and not evict Cecilia when they acquired *full* ownership among themselves by survivorship." Once again, however, the trial court and the Ng Brothers have each suggested reasonable inferences from the evidence, and we will not here discount the trial court's conclusion in favor of the brothers' alternative interpretations. (*Gonzales*, *supra*, 267 Cal.App.2d at p. 431.) Nor is this evidence essential to the court's finding of nondelivery.

At bottom, while reasonable minds can differ regarding the import of the various factors considered by the trial court in making its nondelivery finding, we see it as our task on review to determine solely whether the trial court identified a plausible rationale, based on the evidence presented, for distinguishing the 1997 Deed for the Second Avenue Property from the many other deeds executed by Joseph during his lifetime which the court concluded had been validly delivered. We believe that it did. Specifically, the court was clearly concerned, after viewing the testimony of the parties, about the circumstances surrounding the execution and recordation of the 1997 Deeds and, in particular, with T.Y.'s role in their creation and recordation. The 1997 Deeds represent the only time with respect to any of the properties at issue in these proceedings that the deeding process was controlled by someone other than Joseph. Moreover, as discussed further below, the trial court expressly found that Joseph believed that a deed was not effective unless it was recorded, and the trial court was consistent in concluding that only the deeds actually recorded *by Joseph* during his lifetime were validly delivered. Further, the trial court found that Joseph was "susceptible to persuasion and was known to make contradictory statements," and there is evidence in the record that he was non-confrontational and would tell people what he thought they wanted to hear. Indeed, T.Y. himself testified that it was Joseph's actions that reflected his true intentions and stated: "[Joseph] knew how to do things, and what he say and what do is different. Because if he wanted something done, he knew how to do it without us going along." In sum, we believe it is a reasonable inference from the evidence presented that Joseph, not wanting to cause family conflict as he prepared to marry Cecilia, told T.Y. to go ahead and meet with an attorney as his agent to discuss the title to his various properties and even went so far as to execute the 1997 Deeds, without ever intending them to be immediately operative.[11] On this basis, we deem the trial court's finding of nondelivery with respect

[11] Indeed, although not mentioned by the trial court, when Joseph executed the 1998 Deeds discussed in detail below, he did not include signature blocks for anyone other than himself on the deeds for the Second Avenue Property or the 451 Rollins Road Property. In contrast, the 1998 Deeds for the remaining rental properties all included signature blocks for each of the grantors included on the previous deeds for those properties. This fact also supports the conclusion that Joseph did not consider himself to have presently divested himself of title when he signed the 1997 Deeds, because he did

to the 1997 Deed for the Second Avenue Property to be supported by substantial evidence.

3. *The 451 Rollins Road Property*

As stated above, title to the 451 Rollins Road Property was held by Joseph and Pechin as joint tenants. Thus, when Pechin died in 1990, Joseph became the sole owner of this property. Similarly to the Second Avenue Property, Joseph executed a deed in July 1997—in connection to his impending marriage to Cecilia—purporting to convey his interest in the 451 Rollins Road Property to himself and his five sons in joint tenancy, with rights of survivorship. The trial court also found this 1997 deed to be testamentary and therefore void.

Specifically, in its Statement of Decision, the trial court noted that the 1997 Deed for the 451 Rollins Road Property was executed and recorded at the same time and under the same circumstances as the 1997 Deed for the Second Avenue Property. Thus, all of the arguments supporting the trial court's finding of nondelivery in the context of the Second Avenue Property applied equally to the 1997 Deed for the 451 Rollins Road Property. In addition, since the property was a rental property, the court focused on "what control the sons exercised over income generated by this property, their participation in property management, and what other responsibilities they assumed in connection with their alleged interests." In short, the trial court concluded that the Ng Brothers were not involved in the management of the property; did not specifically contribute funds for its purchase; and did not assume any liability in connection with its acquisition. Moreover, all of the income generated by the property was placed in financial accounts controlled by Joseph during his lifetime; only Joseph and Cecilia made beneficial use of that income during Joseph's lifetime; and the Ng Brothers never asked Joseph to account for the rents generated by the property. The trial court found that Joseph's intention "was for the income to be distributed to his sons only upon his death, to which they assented." Based on all of these factors, the trial court found by clear and

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not believe he needed the signatures of any of the other grantees in the 1997 Deeds to make the transfers contemplated in 1998.

convincing evidence that the Ng Brothers were not intended to be given a present interest in the 451 Rollins Road Property pursuant to the 1997 Deed, and thus the deed was testamentary.

For the reasons articulated above in connection with the 1997 Deed for the Second Avenue Property, we believe there is substantial evidence in the record to support the trial court's similar finding of nondelivery with respect to the 1997 Deed for the 451 Rollins Road Property. However, the Ng Brothers raise two additional arguments specific to the 451 Rollins Road Property in their challenge to the trial court's finding of nondelivery. First, citing *Hammond v. McArthur* (1947) 30 Cal.2d 512, 516, the brothers claim that joint tenants are free to agree among themselves with respect to possession and division of income for the underlying property. Thus, they argue, the fact that Joseph retained total dominion and control of the 451 Rollins Road Property is "perfectly consistent with the interest reserved," and therefore cannot be relied upon to support a finding of nondelivery. (See *Mecchi v. Pecchi* (1966) 245 Cal.App.2d 470, 485 (*Mecchi*) [control exercised over property by grantor consistent with retention of life estate and therefore not inconsistent with delivery]; see also *Stewart v. Silva* (1923) 192 Cal. 405, 409 [same].) While we recognize the differences between the joint tenancy deed here at issue and the typical grantor-grantee conveyance, we believe that Joseph's absolute dominion and control over the rental property and its income is nevertheless a factor that can be considered in support of the court's finding of nondelivery. At the very least, it is consistent with that finding. (*Mecchi, supra*, 245 Cal.App.2d at p. 484 [with respect to circumstances supporting a finding of nondelivery, "[i]t is recognized that it is only the cumulative effect of such circumstances which sustains the conclusion of nondelivery"].) Had the Ng Brothers been actively involved in the management of, and/or retained a portion of the rents from, the 451 Rollins Road Property, a different result might have been required.

Next, although they concede that no reported California case has addressed the issue, the Ng Brothers also argue, based on authority from other jurisdictions, that " '[a] party to litigation may not take a position contrary to a position taken in an income tax return.’ ” (See, e.g., *Amtrust, Inc. v. Larson* (8th Cir. 2004) 388 F.3d 594, 600-601 [various courts have invoked “ ‘[q]uasi-estoppel’ ” to estop parties from asserting a position in judicial proceedings different from what was reported on their income tax returns; no estoppel in this case because the two positions were not inconsistent]; *Youngman v. Robert Bosch LLC* (E.D.N.Y. 2013) 923 F.Supp.2d 411, 422 [residency statements in tax returns and bankruptcy petition estop party from claiming otherwise in a tort action]; *In re McGuirl* (D.D.C. 1993) 162 B.R. 630 [in son’s bankruptcy proceeding, mother was estopped from denying that property was subject to the bankruptcy estate where, although mother had taken her son off title, he continued at her instruction to report income and dividends on his tax return].) Thus, they claim, Cecilia is estopped from asserting an ownership interest in the 451 Rollins Road Property in this litigation that differs from that reported on her tax returns.[12]

The trial court found the following with respect to the allocation of rental income for the various family-owned rental properties that were included on the Ng family’s tax returns: Jemi Guard (Guard) prepared Joseph’s tax returns as well as the tax returns of the Ng Brothers and their wives starting in the 1980s and continuing through Joseph’s death in 2007. In the early days, T.K.—who is a tax attorney and rented office space to Guard—provided Guard with the income and expense information for the rental properties necessary to complete the Ng family tax returns. Later Joseph, and then Cecilia, provided this information. More importantly, however, it was T.K. who initially directed Guard regarding how to allocate the rental income among the family members, and, according to Guard, these allocations were not changed—at least with respect to Joseph’s percentage interest—up to the time of Joseph’s death. None of the Ng brothers ever questioned Guard regarding the income figures included on their tax returns.

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[12] Cecilia asserts that the Ng Brothers have waived this argument by failing to raise it in the trial court. However, T.Y. did mention below, in a response to certain questions posed by the trial court, that Cecilia’s claim that Joseph owned 100 percent of the properties was inconsistent with the couple’s tax returns. And the trial court addressed the issue of the inconsistent tax returns in its Statement of Decision. Under such circumstances, we will reach the issue.

With respect to the 451 Rollins Road Property in particular, the trial court found that the Ng Brothers did pay some income taxes in varying amounts. However, the court further found that Joseph and his sons "declared income for rents generated by the 451 Rollins Road Property in amounts inconsistent with the fractional ownership interests appearing on the face of [the] 1997 grant deed." For instance, in 2003 and 2004, Joseph and Cecilia jointly declared 20 percent of the income generated by the property, while the remaining 80 percent was declared by Daniel and Katherine. In 2005 and 2006, the years directly preceding Joseph's death in January 2007, Joseph and Cecilia declared one-sixth of the rental income for the property, as did the other five Ng Brothers and their wives or, in one instance, ex-wife. On this basis, the trial court expressly found that the varying income tax payments made by the parties with respect to the 451 Rollins Road Property "were part of a plan to avoid or minimize estate taxation, not an assertion of present beneficial ownership."

We believe that estoppel based on prior inconsistent statements in tax returns is best understood as an extension of the doctrine of judicial estoppel. (See *American Manufacturers Mutual Insurance Co. v. Payton Lane Nursing Home, Inc.* (E.D.N.Y. 2010) 704 F.Supp.2d 177, [declining to apply doctrine of judicial estoppel where prior statements in tax return were not inconsistent with current position]; *Mikkelson v. Kessler* (N.Y. 2008) 50 A.D.3d 1443, 1444 [underlying rationale of the doctrine of judicial estoppel "extends to prevent a party from asserting . . . a factual position in a legal proceeding that is directly contradicted by his or her tax return"].) In California, "numerous decisions have made clear that judicial estoppel *is an equitable doctrine*, and its application, even where all necessary elements are present, is discretionary." (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 422.) Moreover, "[b]ecause of its harsh consequences, the doctrine should be applied with caution and limited to egregious circumstances." (*Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 132.)

We are not convinced that the reasoning underlying the use of "quasi-estoppel" in the income tax return context is sound. (See *In re Kritt* (Bankr. 9th Cir. 1995) 190 B.R.

382, 388-389 [declining to adopt doctrine of tax return estoppel because it is "inconsistent with the court's obligation to examine the substance, rather than the form, of the transaction" and because it creates the "very real possibility of inconsistent results" since the taxing authorities are not bound "by the characterization applied by the tax payer in the tax return"].) In the present case, however, we need not determine whether the doctrine of judicial estoppel should extend to prior inconsistent statements in tax returns because, under these particular facts, we would decline to impose it.

The Ng Brothers argue here that, after the execution of the 1997 Deed for the 451 Rollins Road Property, Joseph and Cecilia claimed only a small fraction of the income that the property generated on their tax returns and thus Cecilia's ownership interest should be limited to that fractional amount. While the Ng Brothers' characterization of Joseph and Cecelia's tax returns is true as far as it goes, because no pre-1997 tax returns were admitted at trial, there is no evidence in the record that this practice did not pre-date the execution of the 1997 Deed. To the contrary, Guard testified that the allocation of the rental income among the family members (especially Joseph) was generally not changed from the 1980's up to the time of Joseph's death. Moreover, it was T.K., a tax attorney, not Joseph, who set the tax allocation scheme in motion in the first place. Finally, the trial court found that the income claimed on the parties' income tax returns did not match the fractional interests set forth in the 1997 Deed for the 451 Rollins Road Property and that such payments "were part of a plan to avoid or minimize estate taxation, not an assertion of present beneficial ownership." The clear implication of all of these facts is that the Ng family had a long-term tax minimization plan in place and that Joseph's allocation of rental income on his tax returns with respect to the 451 Rollins Road Property did not change based on the execution of the 1997 Deed. Under such circumstances, the numbers set forth by the parties in their tax returns simply had no bearing on the question of whether the 1997 Deed to the 451 Rollins Road Property was validly delivered, and thus estoppel in this context would be inappropriate. Certainly, on these facts, the trial court's decision finding the parties' tax returns essentially irrelevant to the issue of delivery of the 1997 Deed for the 451 Rollins Road Property cannot be seen as an abuse of discretion. (See *Miller v. Bank of America, N.A.* (2013) 213 Cal. App. 4th 1, 10 [whether judicial estoppel should have been applied by the trial court reviewable for abuse of discretion].) For all of the reasons discussed above, we will not disturb the trial court's finding of nondelivery with respect to the 1997 Deed for the 451 Rollins Road property.

4. *The 47th Avenue Property, the 48th Avenue Property, the 481 Rollins Road Property, the Boone Property & the Hampton Property (the Five Rental Properties)*

In her cross-appeal, Cecilia argues that the trial court erred in concluding that the original pre-1998 deeds with respect to the Five Rental Properties—which included some or all of the Ng Brothers and their wives on title—were valid. Specifically, she claims that all of these deeds were testamentary and therefore void because "Joseph did not intend any interest in any of the properties to pass to the sons and/or daughters-in-law until Joseph and Pechin's deaths." Thus, according to Cecilia, the transfers fail for lack of delivery.

The trial court disagreed. In its Statement of Decision, it found that Joseph had purchased the Five Rental Properties and that, "[a]s a routine matter, Joseph and Pechin placed the names of their sons and, on some occasions, their son's wives, on the rental properties as joint tenants for [the] purpose of succession." The court further found that the inclusion of the sons' names on the various deeds was at Joseph's direction and that, while he was alive, Joseph "exercised total dominion and control over the properties and all of the income from the properties." Despite these facts—which arguably could support a finding of nondelivery as discussed above—the trial court concluded that Cecilia had failed to rebut the presumption of valid delivery which arose from the recordation of all of the pre-1998 deeds for the Five Rental Properties.

The court first noted that all of the original deeds with respect to the Five Rental Properties were from third party grantors to Joseph and some or all of his sons. As stated above, it is ultimately the intention of the *grantor* to immediately pass title to the property in question that determines whether a deed has been delivered. (*Perry, supra,* 206 Cal.App.2d at p. 221; *Henneberry, supra*, 164 Cal.App.2d at p. 129.) Since there was no evidence in the record that any of these third party grantors intended to delay delivery, Cecilia could not rebut the presumption that the recorded deeds were valid.

Citing *Estate of Franco* (1975) 50 Cal.App.3d 374 (*Franco*), however, Cecilia argues that it is Joseph's intent that controls because, in adding the Ng Brothers and their wives to title on properties he was purchasing, Joseph was acting simultaneously as both a grantor and grantee. In *Franco*, the grantor purchased American Telephone and Telegraph (AT&T) stock in the 1940's in his name and in the name of his half-sister as joint tenants. In a civil action attempting to establish ownership of the stock after the grantor's death, the trial court ultimately concluded that the half-sister was entitled to ownership. (*Id.* at pp. 377-380.) The court of appeal reversed. Specifically, it concluded that substantial evidence supported the conclusion that the grantor did not intend to give his half-sister a present interest in the AT&T stock and therefore lacked the necessary donative intent. For instance, the grantor kept the stock in his own safety deposit box and the half-sister did not even know about it until almost ten years after it was purchased; the grantor used the dividend checks to purchase additional stock without consulting the half-sister; on occasion he banked the dividends for his own personal use; at different times he told his half-sister that the stock would be hers upon his death; and he told his brother that he could change the joint ownership anytime he wanted to. (*Id.* at pp. 380-381.) On this basis, the appellate court found the disposition of the stock testamentary and therefore invalid. (*Id.* at p. 381.) As Cecilia sees it, *Franco* stands for the proposition that a donor can be both a grantor and a grantee and, when this is the case, it is that person's intent which controls on the question of delivery rather than the intent of the original grantor.

We need not here determine whether, based on *Franco*, Joseph can properly be viewed as both grantor and grantee with respect to the rental deeds at issue—purchasing the properties from the third-party grantors and simultaneously granting to his children and their wives various interests in those properties. Rather, we conclude that, even if we accept Cecilia's argument that Joseph was acting as grantor with respect to the interests of his sons and their wives in the Five Rental Properties—and thus it is his intention that controls—substantial evidence supports the conclusion that Joseph intended to immediately pass title to these properties as reflected on the deeds. Thus, the trial court did not err in concluding that the deeds for the Five Rental Properties were validly delivered.

First, as the trial court noted, a presumption exists that the deeds to the Five Rental Properties were validly delivered based on their recordation. (See Evid. Code, § 1600; *Butler*, *supra*, 188 Cal.App.2d at p. 233 [“recordation at the request of the grantor constitutes prima facie evidence of delivery with intent presently to convey the interest set forth in the deed”].) Further, as discussed above in relation to the Milowe letter, even if the Ng Brothers and their wives were included on the title to the Five Rental Properties “for purposes of succession,” this does not necessarily mean that Joseph did not have a present intent to immediately pass title. It could simply mean that Joseph used joint tenancies as a legal means to avoid probate. And, indeed, each of the Ng Brothers testified at trial that he considered himself a co-owner of each parcel of real property from the day his name went on recorded title. However, in the end, we believe the controlling factor with respect to these deeds is the fact that—unlike the 1997 Deeds for the Second Avenue Property and the 451 Rollins Road Property—the trial court found that the Ng Brothers and their wives were jointly and severally liable on the deeds of trust executed in connection with their acquisition. Thus, although, Joseph supplied the cash for purchases, each of the grantees also incurred liability with respect to the acquisition by pledging their interests in the Five Rental Properties as security for the related loans. This is strong evidence that Joseph meant the grantees to be his partners in these property acquisitions and that title to the properties was intended to pass immediately to all of the grantees, each of whom had an observable financial stake in the transactions.

Moreover, for two of the Five Rental Properties—the 481 Rollins Road Property and the Boone Property—subsequent deeds were recorded expanding the joint tenancies to include additional Ng Brothers and their wives who had not originally been included on title. For example, the first recorded deed for the Boone Property indicates that, in May 1987, a third party grantor conveyed the Boone Property to Joseph, Pechin, David, and David's wife, all as joint tenants. Shortly thereafter, by recorded deed dated August 12, 1987, the four original Ng grantees conveyed the Boone Property to themselves plus T.Y., Eng Eng, Ronald, Ronald's wife, and Daniel. That all of the original grantees executed these subsequent deeds provides additional evidence that those grantees were viewed as having immediately taken title under the original deeds, thus requiring their signatures to further convey the property.

All of the Ng Brothers testified that, where they were on the original title, they signed the acquisition loan documents with respect to the properties. Cecilia, however, argues that not all of the Five Rental Properties were encumbered upon purchase. For instance, she claims that no encumbrance or assumption of liability is shown in the record for the 47th Avenue Property. We disagree. As described above, on December 2, 1971, third party grantors conveyed the 47th Avenue Property to Joseph, Pechin, each of the Ng Brothers, and Eng Eng, "all as joint tenants." It is true that there is no contemporaneous deed of trust recorded with respect to this property. However, the trial court concluded that, based on the record, it appeared that the grantees under the 1971 deed assumed a 1963 loan originally made to the third party grantors, which was secured by a deed of trust. Subsequently, the 1963 loan was repaid, and a full reconveyance was made and recorded on January 21, 1988. The reconveyance was mailed to Joseph upon its recordation. Further, T.Y. testified that he remembered getting loan documents in connection with the acquisition of the 47th Avenue Property and, in looking at the property record, it appeared "[m]ore likely" that the prior deed of trust had been assumed. Based on all of these facts, the only, or at least by far the most reasonable, inference is that the Ng grantees assumed the debt and deed of trust from the third party grantors when they purchased the property.

Cecilia also contends that there was no encumbrance or assumption of liability with respect to the 1988 purchase of the Hampton Property. As described above, in July 1988, third party grantors conveyed the Hampton Property to Joseph and Pechin, T.Y. and Eng Eng, Ronald and Sylvia, David and Kathy, and Daniel, all as joint tenants. The deed was subsequently recorded. It is true that there is no recorded evidence of deed of trust executed in connection with this purchase. However, on December 2, 1998, all of the then-living original Ng grantees, along with Cecilia and Daniel's then-wife, executed a deed of trust to secure a $70,000 loan with respect to the Hampton Property. Joseph signed on behalf of everyone except Cecilia. The trial court noted in its Statement of Decision that this was believed to be a refinancing of an earlier loan used to acquire the Hampton Property. Thus, it is a reasonable inference that the joint grantees did assume liability with respect to the acquisition of the Hampton Property, as they had for the other four of the Five Rental Properties. At the very least, however, the fact that Joseph signed the subsequent deed of trust on behalf of all of the grantees supports the conclusion that Joseph had intended the original joint tenancy deed to convey an immediate interest in the property, such that the original grantees possessed interests that could be pledged as security for the refinancing loan. In conclusion, based on the foregoing analysis, we will not disturb the trial court's finding that the pre-1998 deeds with respect to the Five Rental Properties were validly delivered.

B. Transmutation and the 1998 Deeds

As described in detail above, in November 1998, Joseph and Cecilia made three separate trips to City Hall by bus to prepare deeds and record various documents. The 1998 Deeds all added Cecilia as a joint tenant with respect to Joseph's interest in the various family properties. While Joseph executed all of the 1998 Deeds, he only recorded two—the deeds for the Second Avenue Property and the Oakland Property. The trial court concluded that none of the other five unrecorded 1998 Deeds had "the effect of transferring property."

In her cross-appeal, Cecilia argues that the five unrecorded 1998 Deeds effected a transmutation of Joseph's interest in those properties to Cecilia and Joseph as joint tenants under Family Code section 852. Pursuant to Family Code section 852, subdivision (a): "A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." The statute further provides that, unless recorded, "a transmutation of real property is not effective as to third parties without notice thereof. . . ." (Fam. Code, § 852, subd. (b).) Whether property has been transmuted is a question of fact. (*McCloud v. Roy Riegels Chemicals* (1971) 20 Cal.App.3d 928, 933.)

In the present case, the trial court treated the unrecorded 1998 Deed for the 451 Rollins Road Property separately from the unrecorded 1998 Deeds for the four other rental properties (the 47th Avenue Property, the 48th Avenue Property, the 481 Rollins Road Property, and the Boone Property). With respect to the 451 Rollins Road Property, the court found that the 1998 Deed had not been validly delivered and was therefore void. Specifically, the trial court concluded that "[i]f [Joseph] intended for this deed to be effective, he would have recorded it, as he did for the other recorded deeds." While the court acknowledged that a deed generally does not need to be recorded to be valid, it expressly found "based on [Joseph's] practice of recording deeds," that Joseph "did not intend for the 1998 deed for 451 Rollins Road to be effective unless it was recorded."[13]

The trial court also found that the 1998 Deed for the 451 Rollins Road Property did not affect a transmutation of Joseph's interest in that property. The court did state that the deed "may" meet the requirements of subdivision (a) of Family Code section 852, which requires a writing accepted by the adversely-affected spouse. However, it did not ultimately reach this issue, concluding instead that the notice requirements of subdivision (b) of that statute had not been met because the Ng Brothers had not received notice of the transmutation. In making this determination, the trial court rejected Cecilia's argument that the Ng Brothers received notice of the 1998 Deed for the 451 Rollins Road Property when Joseph presented Daniel with the two envelopes containing some of the 1998 Deeds. The court found that there was "no evidence that the 451

[13] In its discussion involving the lack of delivery of the 1998 Deed for the 451 Rollins Road Property, the trial court mentioned that a copy of that deed had been found among Joseph's effects when he died. The parties are in accord that this is factually incorrect. The only document admitted at trial that was found among Joseph's effects was a letter from the attorney, Ms. Milowe. However, we agree with the Ng Brothers that this misstatement is immaterial to the trial court's finding of nondelivery, the crux of which was the trial court's conclusion that Joseph did not intend the deed to be presently effective because he did not record it.

Rollins Road deed was in either of the envelopes, and the circumstances of that meeting suggest that it was not." Specifically, since Joseph was the only grantor on this particular 1998 Deed, it would have been unnecessary for Joseph to transmit it to Daniel for the collection of signatures. Nor would it have made sense for Joseph to leave the deed with his son in Southern California for the purpose of having it recorded in San Mateo County. The trial court concluded that Daniel did not have notice of the 1998 Deed for the 451 Rollins Road Property and that notice could therefore not be imputed to the other Ng Brothers based on Daniel's knowledge.

As for the four other rental properties (the 47th Avenue Property, the 48th Avenue Property, the 481 Rollins Road Property, and the Boone Property), it is true, as Cecilia points out, that the trial court failed to make express findings with respect to transmutation, despite the fact that she raised the issue below in her Objections to Proposed Statement of Decision. The court also did not specifically address the issue of delivery of these deeds. However, as stated above, the trial court did expressly find that the 1998 Deeds for these rental properties "did not have the effect of transferring property." And, the trial court consistently treated the properties as if the 1998 Deeds were ineffective for purposes of distribution. Under such circumstances, we have no difficulty concluding that the trial court impliedly found both that these additional deeds were void for lack of delivery and that they failed to effect a transmutation of Joseph's interests in the underlying properties. Indeed, it would have been impossible for the trial court to reach the decision it did without making these additional findings, as contrary findings on either ground would have had the "effect of transferring property."

On appeal, Cecilia does not challenge the trial court's finding of nondelivery with respect to the unrecorded 1998 Deeds. Rather, she argues only that they should have been viewed as effecting a transmutation of Joseph's interests in the underlying properties to Cecilia and Joseph as joint tenants. Specifically, citing *Estate of Bibb* (2001) 87 Cal.App.4th 461 (*Bibb*), Cecilia argues that the grant deeds at issue satisfy the requirements for transmutation under the Family Code. She also argues that notice was not required to be given to the Ng Brothers in order to effect the transmutations and that the trial court erred in concluding that recordation of the deeds was necessary for transmutation.

With respect to recordation, Cecilia misapprehends the trial court's findings and conclusions in its Statement of Decision. The trial court never determined that recordation is required for transmutation. Nor did the trial court hold that recordation is necessary for delivery of a deed. In fact, the trial court clearly understood and stated exactly the opposite, that recordation is not generally required for deed delivery or for transmutation (where there has been third-party notice). What the trial court did find—when discussing delivery in the context of the unrecorded 1998 Deed for the 451 Rollins Road Property—was that Joseph engaged in a practice of executing and recording deeds throughout his lifetime when he wanted to transfer an interest in property and that, based on this life-long practice, the court could infer that Joseph did not intend for a deed to be effective unless it was recorded. The trial court's conclusions in this regard comport with the law of delivery as set forth above. (See *Hotaling, supra,* 193 Cal. at pp. 382-383 [no valid delivery where both parties believed that the deed would not be effective until recorded]; see also 3 Miller & Starr, Cal. Real Estate, *supra,* § 8.41, p. 8-116 ["A grantor may be mistaken as to the legal effect of the deed, believing that some further act, such as acknowledgment or recordation is necessary before it becomes a completed act. In such cases, because the grantor had no intent to make a present and immediate conveyance, there is no delivery until the subsequent act is performed."].) Based on these conclusions, and our review of the record as a whole, we believe substantial evidence supports the trial court's factual finding of nondelivery with respect to the 1998 Deed for the 451 Rollins Road Property.[14] But, in any event, the trial court's conclusions with respect to recordation do not impact its findings with respect to *transmutation*.

[14] Although not directly at issue here, the trial court's analysis of Joseph's reliance on recordation as a necessary step in the creation of an effective deed also supports the trial court's implied finding of nondelivery with respect to the other four unrecorded 1998 Deeds. Indeed, the trial court stated as much, finding that the deeds did not convey any interest to Cecilia "[b]ecause recordation was not affected." In particular, the trial court found that, in January 1999, Joseph delivered these unrecorded 1998 Deeds to his

We do agree with Cecilia that *Bibb*, *supra*, 87 Cal.App.4th 461, stands for the general proposition that a grant deed signed by a husband transferring his separate property interest in real property to himself and his wife as joint tenants can satisfy the "express declaration" requirement of Family Code section 852, subdivision (a). (See Fam. Code, § 852, subd. (a) ["[a] transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected"].) In *Bibb*, the appellate court reviewed Supreme Court precedent construing the "express declaration" phrase and concluded that "a writing signed by the adversely affected spouse is not an 'express declaration' for purposes of section 852, subdivision (a), '*unless* it contains language which expressly states that the characterization or ownership of the property is being changed.' " (*Bibb*, *supra*, 87 Cal.App.4th at p. 467, quoting *Estate of McDonald* (1990) 51 Cal.3d 262, 272.) Thus, the *Bibb* court interpreted Family Code section 852 "to specifically require that a writing effecting a transmutation of property

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youngest son, Daniel, with the direction to have the deeds signed by all the Ng Brothers and their respective wives and recorded. However, none of the deeds were ever returned to Joseph or recorded. While we agree with Cecilia that it would have been possible for Joseph to convey a portion of his interests in the properties to her regardless of whether the other grantors ever executed the deeds, in such a situation, the partially-executed instrument "is operative to convey the interest of any person named as grantor who does execute it, *unless it is drawn with the obvious intention that it shall not take effect until executed by all the persons named as grantors. . . .*" (*Gonzales*, *supra*, 267 Cal.App.2d at p. 434, italics added.) Here, Joseph drew up the deeds with signature blocks for all of the grantors and asked Daniel to obtain the necessary signatures. Thus, the evidence clearly supports the inference that Joseph did not intend to transfer any interest in the four rental properties until his other family members executed the deeds and they were recorded. *Gonzales*, cited by Cecilia, is distinguishable because, in that case, the grantor who executed the deed knew that the other grantor had refused to sign before he delivered the deed to the grantee, thereby indicating a desire to effect a transfer of his interest regardless of the other grantor's actions. (*Id.* at pp. 434-435.) Here, Joseph knew the deeds had never been recorded because they were created with the instruction that they be returned to him upon recordation, and they were never returned. Despite this knowledge, Joseph never took any additional action indicating that he intended to effect a transfer of his interest in the properties regardless of execution by the other grantees or recordation.

contain on its face a clear and unambiguous expression of intent to transfer an interest in the property, independent of extrinsic evidence." (*Bibb*, *supra*, 87 Cal.App.4th at p. 468.) A grant deed generally meets this requirement. (*Id.* at pp. 468-469.)

However, where a particular grant deed has been determined to be void because it was not validly delivered, this means, by definition, that the deed does not evince a present intent to dispose of the title conveyed by the deed. (See *Follmer*, *supra*, 158 Cal. at pp. 757-758.) Under such circumstances, it simply cannot be deemed an "express declaration" of an intent to transfer an interest in property. Moreover, the fact that transmutation cannot occur without "a clear and unambiguous expression of intent to transfer an interest in the property, independent of extrinsic evidence," does not imply the opposite—that transmutation cannot be defeated by resorting to extrinsic evidence proving that delivery was not intended, despite the language contained in the deed. (See *Bibb*, *supra*, 87 Cal.App.4th at p. 468.) We therefore conclude that a deed determined void for lack of delivery cannot, by its terms, effect a transmutation of the property subject to the deed. Finally, since we conclude that a deed which fails for want of delivery cannot be deemed an "express declaration" for purposes of Family Code section 852, subdivision (a), we need not reach the parties arguments regarding whether notice to the Ng Brothers was otherwise necessary to effect valid transmutations with respect to the five unrecorded 1998 Deeds. Under the facts of this case, no transmutations occurred based on Joseph's execution of these void deeds.

C. Authority for Property Exchange

Once the trial court determined the ownership of the various real properties here at issue in its Statement of Decision, Cecilia was left with a five-sixths interest in the Second Avenue Property and a one-third interest in the 451 Rollins Road Property. The Ng Brothers, in contrast, were entitled to the other one-sixth interest in the Second Avenue Property (a one-thirtieth share each) and the other two-thirds interest in the 451 Rollins Road Property (a two-fifteenths share each). In an Order Setting Pre-Hearing Status Conference dated November 9, 2011, the trial court asked the parties: "Are there any reasons why the Court should not utilize its equitable and probate jurisdiction to make an adjustment in the percentages of these interests so that Cecilia will receive 100% of the Second Avenue property in exchange for a reduced interest in the 451 Rollins Road Property. What if any procedures should the Court adopt?" In a Supplemental Order Regarding Pre-Hearing Status Conference dated November 15, 2011, the court set forth a proposed procedure for the property exchange whereby the court would obtain current appraisals for the properties; would make the adjustment in the percentage shares of the parties so that Cecilia obtained 100 percent of the Second Avenue Property; and would then give the Ng Brothers the opportunity to pay Cecilia for any interest she had remaining in the 451 Rollins Road Property to avoid a partition action. The trial court asked the parties to "please state whether you agree or disagree in whole or in part with the [suggested] procedures and if you disagree state your reasons."

In his initial response to the court's requests regarding the property swap, T.Y. noted as a jurisdictional issue that the Second Avenue Property was not part of the probate estate. He also expressed concern regarding the staleness of the existing appraisals for the subject properties; noted that Cecilia had paid no rent since Joseph's death for living in the Second Avenue Property; stated that a fair swap would have to adjust Cecilia's interest in any post-death income from the 451 Rollins Road Property; suggested that the proposed swap might be a taxable exchange generating income tax liability for the parties; and argued that the proposal forced the Ng Brothers to give up their partition rights to the Second Avenue Property while preserving Cecilia's right to a partition of the 451 Rollins Road Property. Thereafter, in a supplemental response to the trial court, T.Y. argued that the trial court did not have equitable powers to alter the Ng Brothers interest in the Second Avenue Property because Cecilia had an adequate remedy at law—a partition action. T.Y. also asserted that equitable principles did not support the suggested relief in this case and noted that the law " 'strongly disfavors' " the forced sale of property.

In contrast, in her Status Conference Statement, Cecilia indicated that she concurred with the trial court's proposal regarding the property exchange and suggested that the Ng Brothers provide an equalizing payment with respect to any interest she had remaining in the 451 Rollins Road Property after the swap. Thereafter, by order dated November 22, 2011, the trial court appointed a referee to conduct updated appraisals of the Second Avenue Property and the 451 Rollins Road Property and perform a percentage allocation of the parties' interests in each property so that Cecilia could receive 100 percent of the Second Avenue Property in return for her interest in the 451 Rollins Road Property. The referee was ordered to report his conclusions to the trial court, after which the court would "approve or disapprove" the report. After the calculations were completed and a report filed, the court, in its Distribution Order dated December 23, 2011, accepted the referee's appraisals with respect to the two properties and ordered the property exchange in line with the referee's calculations. As Cecilia was owed a relatively small amount with respect to her remaining interest in the 451 Rollins Road Property ($17,500), the court ordered payment of that amount by the Ng Brothers to Cecilia so that no partition of the 451 Rollins Road Property was required.

In its Explanation of Events and Orders After Issuance of Statement of Decision prepared in conjunction with the filing of the October 2012 Final Judgment, the trial court discussed the legal and factual bases supporting its property exchange order. Specifically, the trial court stated: "The Court was aware of the hostile and contentious relationships of the Ng Brothers to Cecilia. Pursuant to Probate Code §§ 9920-9923 and §§ 11950-19531, in order to avoid future conflict of the parties over rent property, taxes and expenses resulting from divided fractional interest in 451 Rollins Road and Second Avenue, and to avoid the expense of a partition action which Cecilia had to file with respect to the Oakland property, the Court, pursuant [to] Cecilia's request and stipulation, distributes 100% of Second Avenue to Cecilia where she was living and 100% of Rollins Road [to the Ng Brothers] with Cecilia receiving the short fall of $17,500 by cash payment."

The court elaborated on its reasoning in its Final Judgment, stressing that the "contentious and bitter" relationship between Cecilia and the Ng Brothers "had resulted in T.Y. and the administrators making substantial unauthorized withdrawals of estate funds . . . [and] also appeared to be responsible for the fact that the administrators had not paid Cecilia her share of rents from the Oakland property in spite of the fact that she owned one third (1/3) of that property." Noting that section 9920 allows for a property exchange if it is "to the advantage of the estate," the court concluded that "[l]eaving Cecilia and the Ng Brothers with undivided interests in the properties, in the Court's view, would leave Cecilia vulnerable to contentious actions by the Ng Brothers, which had resulted in Cecilia not receiving estate funds to which she was entitled []." The trial court also pointed out that the administrators of Joseph's estate had not objected to the proposed swap. Moreover, although T.Y. had objected on a number of grounds—both in court filings and at oral argument—he made no suggestions as to what procedures the court should follow in executing the exchange. In the end, the court found none of T.Y.'s objections persuasive and therefore ordered the exchange of property as described above.

On appeal, the Ng Brothers argue that the trial court lacked fundamental jurisdiction to order the exchange of their interest in the Second Avenue Property for Cecilia's interest in the 451 Rollins Road Property. In support of their position, they cite *Dabney v. Dabney* (2002) 104 Cal.App.4th 379 (*Dabney*) for the proposition that a court "has no fundamental jurisdiction to order someone to transfer an interest in [his or] her land simply because it seems like a good idea under the circumstances." (*Id.* at p. 383.) In *Dabney*, a husband owned a family home and a studio home on neighboring properties. During his lifetime, he granted his daughter a 14.59 percent interest in the studio property. He further directed that, on his death, his property be divided into a marital trust and a bypass trust. His daughter was the residual beneficiary under the marital trust and the life beneficiary of the bypass trust. His wife was named trustee of both trusts. (*Id.* at p. 381.) The wife allocated the family property to the marital trust and the remaining 85.41 percent of the studio property to the bypass trust. Unfortunately, the family home encroached onto the studio home's lot. Even more unfortunately, mother and daughter disagreed regarding trust management. (*Ibid.*) After the daughter filed a motion to appoint a successor trustee and compel a trust accounting, the wife asked the court to order the daughter to execute documents for a lot line adjustment to remove the encroachment and thereby make both properties more marketable. (*Id*. at pp. 381, 383.) Without objection from the daughter, the court ordered the lot line adjustment as requested. (*Id.* at pp. 381-382.)

The court of appeal reversed. It concluded that the bypass trust and the daughter were cotenants with respect to the studio property. (*Dabney*, *supra*, 104 Cal.App.4th at p. 382.) Since "[a]ll cotenants have an equal right to possession of the whole property[,] . . . [i]t follows that one cotenant has no right, absent an action for partition, to force another cotenant to change the boundaries of the possessory interest." (*Ibid.*) Additionally, on the issue of subject matter jurisdiction, the court found that nothing in the daughter's motion for a substitution of trustees gave the court the power to order a lot line adjustment, nor had the wife suggested any cause of action in law or equity that would authorize such an order. (*Id.* at p. 383.) The court concluded that "[h]owever reasonable a court's decision may seem, it must be based on a cause of action. Absent this essential ingredient the court lacks jurisdiction to act." (*Id.* at p. 380.)

We find *Dabney* inapposite for the simple reason that here, unlike in *Dabney*, statutory authority does exist which would allow the trial court to effectuate the property exchange now challenged on appeal. Specifically, as the trial court recognized, pursuant to section 9920: "If it is to the advantage of the estate to exchange property of the estate for other property, the personal representative may, after authorization by order of court obtained under this chapter and upon such terms and conditions as may be prescribed by the court, exchange the property for the other property. The terms and conditions prescribed by the court may include the payment or receipt of part cash by the personal representative." In order to effect such a property exchange, section 9921 requires the filing of a petition by the personal representative or any interested person that describes the property, states the terms of the exchange, and demonstrates that the exchange is to the advantage of the estate. At least 15 days notice of the hearing on the petition is mandated, unless the court dispenses with such notice for good cause. (See §§ 1220, 9922.) Finally, section 9923 provides that "[n]o omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the exchange made pursuant to an order made under this chapter."

The parties have not cited, nor have we discovered, any authority interpreting the property exchange provisions set forth in section 9920 et seq. (Section 9920 Provisions). The Ng Brothers, however, seem to concede that the Section 9920 Provisions do provide a valid procedure for an exchange of an estate's property for other property. They argue simply that resorting to the Section 9920 Provisions to justify the actions of the trial court in this case was inappropriate because a property exchange is only authorized under that statute where it is " 'to the advantage of the estate' " and not merely for "the advantage or for the convenience of one or all of the parties to a dispute over rights to a decedent's property." Moreover, the Ng Brothers further contend that the court has no authority to order a property exchange pursuant to the Section 9920 Provisions where no petition has been filed requesting such relief. Finally, the Ng Brothers claim that the trial court's property exchange violated their procedural due process rights.[15] We find none of these arguments persuasive.

First, the trial court indicated it was making the property exchange order under the Section 9920 Provisions and expressly stated that those statutes required a finding that

[15] The Ng Brothers also seem to suggest that, under the Section 9920 Provisions, exchange of probate property for non-probate property is improper. By its plain terms, however, section 9920 allows a court to "exchange property of the estate for *other* property (italics added)." It would make no sense to "exchange" estate property for other estate property.

the exchange be “to the advantage of the estate.” The court then highlighted a number of its concerns with respect to estate administration, given the contentious relationship of the parties. Specifically, the court noted that the enmity between the Ng Brothers and Cecilia led to the unauthorized withdrawal of estate funds in the past and could leave Cecilia vulnerable to further “contentious actions by the Ng Brothers.” The record also reveals that, after “someone” sent information to the IRS during the course of this litigation, the IRS reopened the estate federal tax return—despite having previously issued an estate tax closing letter—and sought to impose over $900,000 in additional taxes and penalties on the estate.

Moreover, the fractious nature of the parties’ relationship was not just inconvenient, as suggested by appellants, it was costing the estate real money. Indeed, the Final Judgment discloses payment of $75,000 in referee fees required to sort out the parties claims to various funds, including the monies that were improperly withdrawn by the Ng Brothers. In addition, $32,985 in extra legal fees were required to successfully deal with the IRS’s claim for additional estate taxes. And, the Final Judgment also indicates that the trial court was prepared to hire a professional fiduciary, another estate expense, if David and Daniel refused the court’s order to probate Pechin’s estate so that the Ng Brothers’ interest in Second Avenue could be freely deeded in accordance with the court’s order. Under such circumstances, it is a reasonable inference that any action taken by the trial court to simplify the legal relationships between these hostile parties, and bring the litigation to a swift and final resolution, would ultimately inure “to the advantage of the estate.” (§ 9920.) In fact, this is precisely what the court found, stating that it made the property exchange “to avoid future conflict of the parties over rent property, taxes and expenses resulting from divided fractional interest in 451 Rollins Road and Second Avenue, and to avoid the expense of a partition action. . . .” On this record, then, we have no difficulty concluding that the trial court’s implied finding—that the property exchange was to the advantage of the estate—is supported by substantial evidence.[16]

Next, the Ng Brothers contend that any property exchange pursuant to the Section 9920 Provisions must be made in response to the filing of a petition, and thus a court may not, sua sponte, initiate such an exchange as the trial court did in this case. It is true that section 9921 does state that, to obtain an exchange order under the Section 9920 Provisions, the personal representative or other interested person must file a petition that describes the property, states the terms of the exchange, and demonstrates that the exchange is to the advantage of the estate. It is also true that a specific petition pursuant to the Section 9920 Provisions was not filed in these proceedings.

However, as stated above, Cecilia did file the Distribution Petition, which identified a dispute between Cecilia and the Ng brothers "concerning the extent and nature of decedent's ownership" of the Contested Assets at his death and "concerning the persons entitled to distribution." Importantly, the Distribution Petition requested that the trial court "make an order determining petitioner's entitlement to a distributive share of the decedent's estate under Probate Code sections 6400 and 6401, or sections 21610 *et seq. or such other sections as the Court may determine*, and specifically petitioner's share of each of the [Contested Assets] or the estate (italics added)." We believe this petition was sufficient—especially after Cecilia expressly endorsed the trial court's proposed property exchange—to bring the matter within the purview of the Section 9920 Provisions. In addition, although T.Y. opposed the property exchange, in his Ownership Petition he asked the court to determine the ownership of the rental properties, including the 451 Rollins Road Property. He also contested Cecilia's claims with respect to the

[16] Moreover, although perhaps not strictly relevant to the question of whether the estate was benefitted by the property exchange, we note that the court's order was also in line with Joseph's clear testamentary intent that Cecilia be allowed to live in the Second Avenue Property for the rest of her life, because it removed the possibility that the Ng Brothers could use a partition action to force a sale of that property.

Second Avenue Property, seeking a determination that it was not part of Joseph's estate.[17] Thus, both parties, through their various petitions, had clearly placed the issue of the appropriate distribution of the Contested Assets—including the Second Avenue Property and the 451 Rollins Road Property—squarely before the trial court.

Moreover, the trial court was undeniably aware of the descriptions of the two properties at issue in this matter, as well as the terms and conditions of the proposed exchange. And, as stated above, the court also had a clear understanding as to why the proposed swap would be to the advantage of the estate. Thus, the trial court already had before it all of the information otherwise required to be contained in a section 9920 petition. (See § 9921.) Under such circumstances, to require Cecilia to file yet another pleading in this already extensively litigated matter would have been an unnecessary formality. (See § 9923 ["[n]o omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the exchange made pursuant to an order made under this chapter"].) We therefore conclude that the petition requirement set forth in section 9921 was adequately met in this case.

Finally, we find no merit in the Ng Brothers assertion that the trial court's property exchange order violated their rights to procedural due process. The basis for their argument seems to be that the court's adopted procedure failed to give them all of the procedural protections that might have been available to them in certain non-probate partition actions. First, we note that the Ng Brothers never objected to the procedure proposed by the trial court, despite the opportunity to do so. Moreover, the partition statutes cited by the Ng Brothers were not relied upon by the court in this case. (See Code Civ. Pro., §§ 873.910 & 873.950.) More importantly, however, the gravamen of procedural due process is notice and an opportunity to be heard. (See *Calvert v. County*

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[17] Indeed, years later, T.Y.'s petition in support of his version of the final judgment in this case expressly challenged Cecilia's proposed judgment because it failed to "decide the ownership" of *all* of the Contested Assets, including the Second Avenue Property and the 451 Rollins Road Property, despite his request in the Ownership Petition that the court do so.

of Yuba (2006) 145 Cal.App.4th 613, 622 [adjudicative governmental action that implicates a significant property deprivation generally requires reasonable notice and an opportunity to be heard].) Here, the trial court gave written notice to the parties that it was contemplating the property exchange at issue and expressly asked for comments and/or opposition to the court's suggested approach. The parties were given a hearing and the opportunity to file written responses. Although the co-administrators did not object, T.Y. raised a number of arguments, both in writing and at the November 2011 hearing on the matter. Thus, the Ng Brothers had a full and fair opportunity to air any opposition to the proposed exchange. The trial court simply disagreed with them. We see no due process deprivation.

In sum, since the trial court acted within its jurisdictional mandate and pursuant to available statutory law in fashioning its property exchange order, we find no cause for reversal.[18]

D. Ownership of UBS Account

As a final matter, the Ng Brothers challenge the trial court's determination that Joseph and T.Y. held the $518,943.49 UBS Account as tenants in common rather than as joint tenants. As stated above, the UBS Account, which was originally opened with Paine Webber, was held jointly by Joseph and T.Y. However, the account opening documents—which could have determined the exact legal character of the account—were lost and therefore could not be produced at trial. Moreover, T.Y. did not provide any evidence with respect to the true character of the UBS Account, testifying only that the account was opened at his father's request; that he did not go with his father to open the account; that he may have signed a signature card for the account; and that he might have been added to the account because he was the eldest son. Under these circumstances, the trial court made findings with respect to the nature of the UBS Account based on the

[18] The trial court also relied on sections 11951 through 11953—which authorize the partition of probate property—to justify its property exchange order in this case. Because we conclude that the trial court's actions were appropriate under the Section 9920 Provisions, we need not consider the validity of the property exchange order under the partition statutes.

account statements admitted into evidence and the testimony of a UBS representative, Soren Llanes (Llanes).

The account statements from both Paine Webber and UBS with respect to the UBS account were mailed to "JOSEPH KOON LIM NG/ THIEN YEW NG JT TEN." Llanes was called to testify regarding the type of ownership indicated by the designation "JT TEN" on a UBS account. Llanes testified that, at the time of trial, he had been employed by UBS for three years, both in the Chicago area and in San Francisco. He was familiar with the manner in which UBS labeled its accounts to indicate single or joint ownership. Llanes testified repeatedly and unequivocally that if the UBS Account was a joint tenancy account with rights of survivorship, the account statement would read "JTWROS" not "JT TEN." "JT TEN," in contrast, indicated an account held either as tenants in common, as community property, or as tenants by the entirety. When asked by the trial court, "So we know for sure it's not rights of survivorship for this," Llanes responded, "Yes."

Moreover, although he had not reviewed the opening paperwork for the UBS Account, had never worked for Paine Webber, and did not have specific knowledge of the account-opening process prior to his employment, Llanes testified that even the older Paine Webber accounts would specify "JTWROS." In fact, he stated that he worked with a lot of accounts that were opened prior to his employment by UBS, and "a lot of them still indicate[] 'JTWROS,' which means joint title with rights of survivorship. That's how the accounts were titled." Further, in response to the trial court's question whether, so far as he knew, the same titling system was used before he went to work for UBS, Llanes testified: "The accounts—if the account is opened—that I reviewed that were opened prior to my working with UBS, yes. They were still—it shows that they used 'JTWROS' to indicate joint with rights of survivorship."

Later in the trial, Llanes was recalled as a witness due to discussions between UBS management and T.Y.'s trial counsel, during which T.Y.'s attorney provided UBS with a copy of Llanes' prior testimony. When Llanes appeared in court the second time, he was accompanied by counsel provided by UBS. Llanes' attorney made a point of stating that

Llanes was appearing as a result of T.Y.'s subpoena. Upon recall, Llanes indicated that he wanted to clarify that the true nature of an account could not be determined without the account opening documents. He emphasized his limited time of employment with UBS and his limited knowledge of events prior to his employment. However, when the trial court asked him whether there was any reason, based on his experience, for him to think that Paine Webber might have used a different titling system, Llanes stated: "Not from my experience right now, no."

In its Statement of Decision, the trial court found Llanes prior "spontaneous" testimony regarding the meaning of "JT TEN" on an account statement to be "persuasive and candid." In contrast, the court expressly found Llanes' testimony on recall—to the extent it conflicted with his prior testimony—to be not credible, as it was influenced by discussions with others and was the result of discussions between T.Y.'s counsel and UBS management. Since T.Y. and Joseph were not married, they could not hold a "JT TEN" account as tenants by the entirety or as community property. Thus, based on a review of all the facts, the trial court found by clear and convincing evidence that the UBS Account was held by Joseph and T.Y. as tenants in common. As such, under the Civil Code it was owned one-half by T.Y. and one-half by Joseph's probate estate. (Civ. Code, §§ 683, 685, 686; see also *Caito v. United California Bank* (1978) 20 Cal.3d 694, 705 [tenants in common under an instrument silent as to their respective shares are presumed to take equally].) Since Joseph had no will, his share of the UBS Account would pass through the rules of intestate distribution, one-third to Cecilia and two-thirds to the Ng Brothers, including T.Y. (§§ 6401, subd. (c)(3)(A), 6402, subd. (a).)

On appeal, the Ng Brothers and Cecilia argue at length about whether California's Multiple-Party Accounts Law, Probate Code section 5100 et seq. (CAMPAL), applies to the UBS Account. An "account" falls within the purview of CAMPAL if it is "a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement." (§ 5122, subd. (a).) Further, for purposes of CAMPAL, a "joint account" is defined as "an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship." (§ 5130.) Finally, CAMPAL provides that "[s]ums remaining on deposit at the death of a party to a joint account *belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent*." (§ 5302, subd. (a), italics added.) According to the Ng Brothers, the UBS Account is covered by CAMPAL and, since no clear and convincing evidence exists to the contrary, it should be treated as a joint tenancy account payable in full to T.Y. upon Joseph's death.

In contrast, Cecilia argues, and the trial court found, that the UBS Account does not fall under the auspices of CAMPAL because, as a stock brokerage account which "was used solely for the purpose of stock investment and relied on a stock investment agreement with a stock brokerage firm," it is not included in the definition of covered accounts set forth in section 5122, subdivision (a). Thus, according to both Cecilia and the trial court, the distribution of the UBS Account is governed, not by CAMPAL but by the Civil Code, which provides that "[e]very interest created in favor of several persons in their own right is an interest in common . . . unless declared in its creation to be a joint interest . . . ." (Civ. Code, § 686; see also *id.*, §§ 683 & 685.) As stated above, the trial court concluded that, under relevant provisions of the Civil Code, the UBS Account was distributable one-half to T.Y. and one-half to Joseph's estate.

However, although it concluded that the Civil Code controlled, the trial court also found that the result would be the same under CAMPAL. Specifically, it noted that Llanes credible testimony supported the conclusion that the UBS Account was a tenancy in common. Moreover, the court inferred "from Llanes' testimony, and the rest of the evidence presented in this case, that if the account opening forms could be located, those forms would expressly indicate that the account is held as tenancy in common." Under CAMPAL, "if an account is expressly described in the deposit agreement as a 'tenancy in common' account, no right of survivorship arises from the terms of the account or under Section 5302 unless the terms of the account or deposit agreement expressly provide for survivorship." (§ 5306.) Thus, the court concluded that no joint tenancy existed, even under CAMPAL.

For purposes of our resolution of the ownership question here at issue, we need not decide whether CAMPAL applies to stock brokerage accounts such as the UBS Account. Rather, even assuming CAMPAL controls and requires a designation of joint tenancy absent "clear and convincing evidence of a different intent" (§ 5302, subd. (a)), we find that this necessary "different intent" was adequately established in the trial court. Specifically, we find the trial court's factual finding (made by clear and convincing evidence) that the UBS Account was held by T.Y. and Joseph as tenants in common to be supported by substantial evidence. (See *Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 59 [" ' "[t]he sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." ' "].) In making this determination, we are cognizant of the fact, pointed out by appellants, that our review of the evidence on appeal must be undertaken with the trial court's " 'higher burden' " in mind. (See *ibid.*)

Here, in testimony the trial court expressly found credible, Llanes stated repeatedly that an account statement with a designation of "JT TEN" indicated an account without any survivorship rights. Further, although he never worked for Paine Webber and did not have specific knowledge of the account-opening process prior to his employment, Llanes testified that even the older Paine Webber accounts would specify "JTWROS" for a joint tenancy account with rights of survivorship and nothing in his experience led him to think that Paine Webber might have used a different titling system. Indeed, when asked by the trial court, "So we know for sure it's not rights of survivorship for this," Llanes responded, "Yes." The NG Brothers attack on this evidence is largely an argument that, because Llanes did not possess specific knowledge of the account-opening practices of Paine Webber in 1996 when the UBS Account was opened, his testimony was entirely insufficient to establish the character of the account. While we agree that Llanes testimony cannot unequivocally prove that the UBS Account was held without rights of survivorship, we, like the trial judge, see it as "strong evidence" that the account was held as a tenancy in common. Particularly persuasive is Llanes' testimony that in his three years of employment he had never learned, either from other employees or through his work with older accounts, that Paine Webber accounts might be differently titled.

In addition, other evidence presented in this case shows that, while Joseph often held title to assets in joint tenancy, he also held some property as tenants in common, specifically the Second Avenue Property and the Oakland Property. Thus, a finding that the UBS Account was held as tenants in common would not be inconsistent with Joseph's disposition of his property generally. Finally, nothing in T.K.'s testimony with respect to the opening of the account indicates that Joseph intended to create a joint tenancy with rights of survivorship, resulting in a grant to T.Y. of the entire account upon Joseph's death. To the contrary, the trial court found that Joseph intended that his five sons share equally in his property, a fact more in line with the result actually achieved by the trial court's ruling. In sum, we find the trial court's characterization of the UBS Account in this case amply supported by the evidence and decline to second-guess that finding here.

In the end, then, we see no cause to disturb any of the trial court's challenged findings or legal conclusions in this case. We recognize, of course, that these matters have been hotly contested and that each of the parties can perhaps point to portions of the record that support their conflicting positions. Indeed, were we the trial court, we might have come to different conclusions altogether with respect to certain of the key issues raised—conclusions which very likely would have pleased none of the parties to this unfortunate family dispute. However, as our Supreme Court recognized over a century ago when discussing the delivery of deeds: If there was "testimony which would justify an inference that a delivery had taken place, the testimony to the contrary did no more than to raise a conflict which was, under the established rule of this court, to be finally settled in the trial court." (*Follmer*, *supra*, 158 Cal. at p. 757, italics omitted.) The reverse, obviously, is also true, and we will not now overstep this clear mandate.

Nor do we see reason to interfere with the trial court's disposition of the Contested Assets on the grounds, urged by appellants, that the trial court in this case impermissibly fashioned an "oral will." The trial court concluded that the clear implication of the evidence in this case is that Joseph intended his five sons to share equally in his property after his death, and that, once he married Cecilia, he intended her to share equally with them. This finding is supported not only by Joseph's own statements of intent, but also by the many deeds he executed throughout his lifetime, whether ultimately deemed valid or not. It is equally clear that the trial court, in reaching its many conclusions with regard to the Contested Assets, was well aware of Joseph's underlying testamentary desires and conscious that its decision making approximated the result Joseph sought. In particular, the trial court noted: "[H]ad it been the case that [Joseph], his wife and his sons had done what should have been done, [Joseph's] intention of distributing his estate equal[ly] among his wife and children would have attained." As a consequence, the court found that its disposition—which awarded Cecilia "property in roughly a proportion of the estate that comports with [Joseph's] intentions"—was an "equitable and just resolution."

It is beyond dispute that Joseph's intent was central to this case and, as such, was appropriately ascertained by the trial court and considered in the interpretation of the many actual and attempted property transfers at issue in these proceedings. Moreover, while the trial court may have reached its many conclusions with Joseph's wishes in mind—and indeed, unfortunately, the trial judge appears to be the only one who has actually considered what Joseph would have wanted here—those conclusions all follow applicable law and are well supported by the facts. Indeed, the trial judge expressly stated that he was relying on law, rather than equity, in making his determinations. Under such circumstances, those determinations are not subject to attack merely because they also happened to have the happy, additional benefit of effectuating Joseph's unmistakable—yet poorly executed—testamentary intent.

III. DISPOSITION

The judgment is affirmed. Each party shall bear their own costs on appeal.

REARDON, J.

I concur:

RUVOLO, P. J.

Ng v. Ng A134294, A136591

Rivera, J., dissenting:

I disagree with the majority insofar as it affirms the trial court's determination that the 1997 deeds conveying title to the Second Avenue property and the 451 Rollins Road property from decedent Joseph Koon Lim Ng (Joseph)[1] to himself and his sons as joint tenants, were testamentary and therefore invalid. It is my view that neither the case law nor the facts relied upon by the trial court support a finding that Joseph affirmatively intended the 1997 deeds—and *only* the 1997 deeds—to take effect upon his death.

A. Summary

The basic narrative is not in dispute.[2]

Joseph and his first wife, Pechin Ng (Pechin), "[a]s a routine matter . . . placed the names of their sons . . . on the rental properties as joint tenants for purposes of succession." All of the properties were purchased with Joseph's funds. Some, but not all, of the sons were original grantees, and some but not all of the sons signed deeds of trust to secure mortgages. At least two of the properties were reconveyed to add one or more of the sons to the title. *All* of the deeds were found to convey present title to the grantees.

Pechin died in 1990.

When it became clear that Joseph was going to marry Cecilia Quee Siang Chang (Cecilia) and that she would not be party to a prenuptial agreement, Joseph's son, Thien Yew Ng (T.Y.), acting as Joseph's agent and under his instructions, took all the deeds to Helen Milowe, an attorney, to be reviewed. Milowe was aware that it was Joseph's practice to place his sons on title as joint tenants with its attendant rights of survivorship. At T.Y.'s request, she prepared the two 1997 joint tenancy deeds to be "*consistent with prior practice*." (Italics added.) These deeds granted Joseph's interest in the Second

[1] See Maj. Opn., p. 1, fn. 1, *ante*.

[2] This factual narrative does not include the Oakland property, which was always treated differently, and the title to which is not in dispute.

Avenue and 451 Rollins Road properties to himself and his five sons as joint tenants. Joseph signed them and delivered them to T.Y., who recorded them. On their face, like all of the other deeds, they conveyed present title to the grantees.

After being married to Cecilia for about a year, Joseph prepared and recorded a deed conveying his one-sixth share in the Second Avenue property to himself and Cecilia as joint tenants. On its face, the deed conveyed present title.[3]

There is no evidence that Joseph ever stated to anyone that he intended any of the deeds to take effect only upon his death.

These undisputed facts lead to the ineluctable conclusion that Joseph intended *all* of the deeds to have the same effect. The trial court, however, decided that its role was to effectuate what *it found* to be the true wishes of Joseph (that Cecilia receive a one-sixth interest in all of the properties), even though Joseph himself had failed to—or chosen not to—consummate those wishes. To achieve this result, the court pieced together an assortment of facts and inferences to support the invalidation of *only* the 1997 deeds so that Cecilia would have a larger share of those properties in order to offset the fact that she did not receive any share of any of the properties under the 1998 deeds that were never recorded.

After a painstaking review of the statement of decision, I have concluded there is no coherent way to achieve such a result that is faithful to the law, the record, and the court's own findings.

I am fully cognizant of the highly deferential standard of review we apply under these circumstances. Still, I am compelled to conclude that the facts and inferences undergirding the trial court's findings and conclusions, when viewed in context are, at best, irrelevant and at worst, either unsupported in the record or contradicted by the

[3] Joseph also prepared deeds for all the other properties, purporting to convey to himself and Cecilia a one-sixth or one-fifth share in those properties, but none was recorded.

court's own findings. Consequently, I would conclude that the trial court erred in finding that Cecilia had supplied sufficient evidence to overcome the presumption that the duly recorded and delivered 1997 deeds were valid. (Evid. Code, § 1600.)

B. Analysis

The trial court separately analyzes the two 1997 deeds, but incorporates much of its analysis of the Second Avenue deed into its analysis of the 451 Rollins Road deed. The following analysis therefore applies to both deeds, unless otherwise indicated.

The trial court begins with the circumstances under which the deeds were created. It recounts that the deeds were prepared, executed, acknowledged, and recorded at the urging of T.Y. when he learned of Joseph's intent to marry Cecilia, "a significantly younger woman"; that T.Y., rather than Joseph, requested that the deed be recorded; and that the conveyance was made for "zero consideration" and not subject to transfer tax or a property tax reassessment. According to the trial court, these facts indicate that the conveyance was one of "form and not of substance." Also, the fact that T.Y., rather than Joseph, undertook recordation of the deed, the court surmised, "significantly reduces its evidentiary value with respect to [Joseph]'s intent to presently convey any interests in that deed." The trial court, however, does not explain why or how any of the facts recited would tend to support the conclusions drawn and cites only *Priest v. Bell* (1954) 123 Cal.App.2d 528 (*Priest*) as authority.[4]

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[4] In *Priest*, the issue on appeal was whether the presumption of present validity that arises based on physical delivery of a deed is overcome by *undisputed* evidence that the deed was intended to be testamentary. The appellant's contention was that "manual delivery of a deed vests title in the grantee *regardless of the intent with which the deed is delivered.*" (*Priest, supra*, 123 Cal.App.2d at p. 530, italics added.) The appellate court rejected that argument, relying on the principle that, while physical delivery raises an inference that the grantors are parting with the title, " 'that inference may be overcome by evidence showing that such was not the intention of the grantors.' " (*Id*. at p. 531.) Because there was "no testimony that [the grantor] ever intended to or did deliver a deed which would be presently effective"—including the grantee's own testimony—the presumption was overcome. (*Id*. at p. 532.) While the trial court described certain facts

It was T.Y.'s undisputed testimony, apparently credited by the trial court, that Pechin wanted to "pass on the property to the sons," and the deeds were prepared to "clarify" actual ownership and to effectuate Pechin's wishes. The timing of the deeds' preparation—and T.Y.'s own testimony—does indicate a desire to protect the sons' interests in the property vis-à-vis Cecilia, but that sheds no light on *when* title would pass. It is sheer speculation to say that the timing of the deed's preparation (in anticipation of the remarriage) somehow reflects a desire on Joseph's part to deliver title to the sons at his death, contrary to Joseph's normal practice of passing title presently.

As already mentioned, the trial court also concluded that the "evidentiary value with respect to [Joseph's] intent to presently convey any interests" in the property is "significantly reduce[d]" because T.Y., rather than Joseph, caused the deeds to be recorded. The court does not explain why this would be so, and there is absolutely no authority to support such an evidentiary inference. Indeed, this conclusion is undermined by the court's finding that "Joseph directed T.Y. to meet with [Milowe] and gave him instructions with respect to the meeting . . . [and, t]herefore, T.Y., in his dealings with [Milowe] was acting as an agent for Joseph." Presumably T.Y. continued to act as Joseph's agent to complete the ministerial task of recording the deeds. Nothing in the record suggests he was acting either secretly or against Joseph's wishes. And, under the circumstances, it is entirely understandable that Joseph might not wish to have the recorded deeds returned to his address, so Cecilia would not see them.[5]

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and circumstances surrounding the preparation of the deed—for example, it was prepared at the urging of the grantors' children, and given with no consideration—these facts did not appear to be relevant to the appeal since the appellant's only argument was a legal one: whether the presumption of present validity created by physical delivery overcomes a clear statement of testamentary intent.

[5] In connection with the preparation of the 1997 deeds the trial court also stated that Joseph was "susceptible to persuasion and was known to make contradictory statements." There was testimony that Joseph expressed inconsistent intentions to his sons, "depending on who was asking, when he was questioned and the circumstances."

The fact that the sons were added to title without any consideration is also irrelevant to the issue of whether the deed was intended to have *immediate* or only *future* effect.[6] Consideration is not required for a valid deed (*Greeninger v. Ruelle* (1954) 124 Cal.App.2d 8, 9; and see Civ. Code, § 1040), so the absence of consideration for a deed transferring Joseph's title from himself to *himself* and his five children cannot somehow be probative of an intent to convey present title to himself but not to his sons, as the trial court has concluded. Further, in this case there was nothing irregular in Joseph's act of adding his sons' names to the titles of his properties with or without consideration. The trial court *rejected* the sons' claims that Joseph purchased most of the rental properties from "pooled funds" comprised of contributions from Joseph and from each of the sons plus ongoing rental income. The court specifically found "[t]hey were Joseph's funds." Consequently, in most instances, the sons gave no consideration for their interests in any of the properties.

The trial court nevertheless tries to distinguish the prior deeds from the 1997 deeds on the ground that the sons were the grantees of third-party grantors and/or that the sons incurred "personal liability" because they had signed deeds of trust securing the

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So, for example, Joseph would tell one son that he was going to give him one-third of the properties, and then tell the same thing to another son. While there was testimony that Joseph made inconsistent statements for the purpose of avoiding conflict, there is *no* testimony by *anyone* that Joseph was "susceptible to persuasion" and the trial court's own findings concerning Joseph's independence and his complete control over all the properties contradict that unsupported statement.

[6] The trial court relies on *Priest, supra,* 123 Cal.App.2d 528 and on *Mademann v. Sexauer* (1953) 117 Cal.App.2d 400 in considering the factor of lack of consideration. As has been noted in *Priest*, the Court of Appeal based its decision on the undisputed evidence that the grantor's expressed intent was testamentary. Although *Mademann* can be read as approving the trial court's use of lack of consideration as a factor in determining whether property was conveyed with testamentary intent (*Mademann,* at p. 403), it has never been cited for that principle, and I have found no other authority to support it. In any event, the facts in *Priest* and *Mademann* bear no resemblance to this case, where there is a history of adding family members to title without consideration and where the grantor is also a grantee.

mortgages, which fact, the court concludes, supplies consideration. In fact, all the sons were not grantees on all the original deeds. (See fn. 9, *post*.) Further, to the extent any of the sons signed deeds of trust (*ibid*.), this does not make them "personally liable" for the mortgage; it only allows the signatory sons' interest in the property to serve as security for the mortgage. (Civ. Code, §§ 2890, 2909, & 2928.) Under the circumstances, lack of consideration does not distinguish the 1997 deeds from all the prior deeds.

In the same vein, the absence of a property reassessment or a transfer tax is utterly irrelevant to Joseph's intent. No transfer taxes can be collected unless the consideration for the transfer exceeds $100. (Rev. & Tax. Code, § 11911.) And, no reassessment is permitted if the change in ownership results from "the creation . . . of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants . . . ." (Rev. & Tax. Code, § 62, subd. (f).) The absence of tax consequences, therefore, cannot support either of the trial court's conclusions—that the deeds were for "form and not . . . substance" or that the grantor did not intend for the deeds to take present effect.

Beyond the core facts already discussed, the trial court additionally relied upon statements made by Joseph at a family meeting in 2005 concerning the Second Avenue property. He said the property "was to be used as a home and not a rental property, that the sons were not to 'ask for any share' and that Cecilia was to live in it for the rest of her life." Based upon this statement—and a statement made by Joseph to Cecilia's sister that he was the "full owner of his various propert[ies]"—the court concluded Joseph did not intend for title to the residence to pass to his sons until his death. It reasoned, "[t]he fact that [Joseph] disclosed to his grantee-sons as well as to third parties his *intention* to grant an exclusive life estate to Cecilia shows that he did not intend for his sons to possess the property until after his death since [Joseph] would expect Cecilia, forty years his junior, to outlive him." The conclusion simply does not follow from the premise.

Indisputably, Joseph was expressing his desire that Cecilia have an exclusive life estate in the home during *her* lifetime (not just during *Joseph's* lifetime), and so he told his sons not to ask for “any share” of the property or to use it as a rental while *Cecilia* was living. But this does not prove anything about Joseph’s intent vis-à-vis the 1997 deed, because whether Joseph believed in 2005 that his sons were already part owners or whether he believed the deed would take effect only upon his death, the message would be the same: give Cecilia a life estate after I die. That request is therefore irrelevant to Joseph’s state of mind concerning the 1997 deed.[7]

The trial court next points to the sons’ conduct after the 1997 deeds were recorded—treating as significant the fact that Joseph and Cecilia continued to live in the residence, and the sons did not demand rent, pay taxes, pay the mortgage (if any), or pay expenses on the Second Avenue property after 1997. Similarly, Joseph and Cecilia continued to manage the 451 Rollins Road property after 1997, including paying all the expenses and retaining all the beneficial income; the sons did not seek to exert any control over the property and did not demand an accounting. While these facts can tend to prove testamentary intent (see, e.g., *Blackburn v. Drake* (1963) 211 Cal.App.2d 806, 817-818), there are two reasons why, in this case, they do not.

First, cases such as *Blackburn v. Drake, supra*, 211 Cal.App.2d 806 involve deeds which grant *full* title to the grantees. Here, Joseph granted to himself a partial interest in the properties along with his sons as joint tenants. Therefore, his continued exclusive possession of the property and his payment of taxes and expenses were not inconsistent

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[7] In connection with the 2005 meeting, the trial court also noted that “[Joseph] made several representations that he was the full owner of *this* property.” (Italics added.) Although the record contains testimony from Cecilia and her sister that Joseph told them he was the full owner of *all* of his various properties—a statement that was manifestly incorrect, but perhaps referred to Joseph’s control rather than his ownership—there is no evidence Joseph claimed full ownership of *only* the Second Avenue property after 1997. The trial court also stated that, “[p]er Cecilia, the sons conceded at family meetings that Joseph fully owned all of the properties.” There were no such concessions. Cecilia only testified that Joseph pronounced what was characterized as an oral will at the family meeting, directing that “hundred percent all the rental property” (except the Oakland property) be divided “to each one 1/6.”

with his ownership interest. (*Taylor v. Taylor* (1961) 197 Cal.App.2d 781, 787 [one joint tenant can have exclusive possession of the property by agreement of the joint tenants]; *Hammond v. McArthur* (1947) 30 Cal.2d 512, 516.) Second, the trial court expressly found that during Joseph's life, he maintained "total dominion and control" over *all* the properties, and "independently" made decisions affecting the properties irrespective of who was on title. Thus, Joseph's continued exclusive possession and control of his own residence, and the sons' hands-off approach with respect to both properties after the 1997 deeds were delivered, had no tendency to prove that title had not passed because that conduct was entirely in keeping with how *all* the properties were managed after the sons were placed on title.

The court also briefly commented on the fact that Joseph's son, Thien Koan Ng (T.K.), was a grantee under the 1997 deed to the Second Avenue property, and "[p]etitioners have failed to explain why [Joseph] would make this second bequest to T.K. in light of the fact that T.K had already expressly disclaimed any present interest he [might] have had while [Joseph] still occupied the property." This misstates T.K.'s testimony. T.K. testified that he convinced his parents to purchase the Second Avenue property by promising to pay all expenses, which he did for more than 10 years. T.K. was originally on title, but quitclaimed his interest in the property to his parents in 1989, upon his father's request. There is no testimony that T.K. also "expressly disclaimed" any interest "while [Joseph] still occupied the property," and the trial court has not cited to any portion of the record to support such a statement.

Finally, the trial court relies on the letter from Milowe, which stated it was common practice for Joseph and Pechin to place their sons on title with the idea that this would "ensure the transfer of property to the younger generation [upon] their deaths." According to the trial court, this "clearly indicates that T.Y., who acted as an agent for Joseph in having the 1997 grant deeds drawn up, understood that it was his father's intention to convey interests that would become effective *only* upon his death." (Italics added.) This interpretation of Milowe's letter is beyond strained.

The distinguishing feature of a joint tenancy versus a tenancy in common is the *right of survivorship*. (*Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1317.) This is clearly spelled out in the letter: "Joint tenants have a right of survivorship, which means that the other joint tenants inherit [*sic*] the property proportionally upon the death of a joint tenant. Tenants in common do NOT have a right of survivorship, so that upon the death of a tenant in common, the deceased person's undivided interest in the property passes in accord with their will or . . . the laws of intestate succession." Reading the letter in its entirety, it is unmistakable that the intention was not to create deeds that would take effect only upon Joseph's death, but to put title into the names of Joseph and his sons so that the sons would own the property and vest into *their father's* interest in the property when he died without going through probate. "A joint tenancy, with its attendant 'right of survivorship,' is an estate designed primarily to allow two or more persons who jointly own property to avoid probate upon the death of one of the joint tenants." (*Estate of England* (1991) 233 Cal.App.3d 1, 4.) As explained by Milowe, the deeds *were* effective to take the property out of Joseph's probate estate by virtue of the joint tenancies and had the added benefit of incurring no gift tax because Joseph retained a partial interest in the properties.[8] T.Y. could not have "understood" that the deed would not be effective until his father's death because that result would be entirely contrary to the fundamental purpose of the deeds—to create a joint tenancy among Joseph and his sons that sets up a right of survivorship. It would also be contrary to Milowe's

[8] The trial court observed that no gift taxes were paid by the estate and no gift tax return was filed with respect to the 1997 transfer. As was explained in Milowe's letter, no gift tax was due at the time of the transfer. And the relevance of the *estate's* failure to pay gift tax on the 1997 transfer is not explained. Whether the estate should have paid taxes on the 1997 gift deeds, and did not, speaks only to the accuracy of the tax return (or at worst, an improper attempt to avoid paying taxes) but says nothing about *Joseph's* intent in 1997, when he signed the deeds.

explanation that, under the deeds, "[Joseph] remains as owner of a one-sixth undivided interest in the two properties."

Milowe further explained that the 1997 deeds were prepared consistent with prior practice—meaning consistent with the deeds for the other properties on which the sons' names had been placed. The trial court itself characterized this practice as Joseph and Pechin routinely "plac[ing] the names of their sons and, on some occasions, their sons' wives, on the rental properties as joint tenants *for purposes of succession*." (Italics added.) The court having found that the pre-1997 deeds were not testamentary, Milowe's letter supports only the conclusion that the 1997 deeds, which are "consistent with" the previous deeds, are also not testamentary.[9]

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[9] The trial court concluded that the original deeds to five of the contested properties (47th Avenue, 48th Avenue, 481 Rollins Road, Boone, and Hampton) were not testamentary because they were made and delivered by third-party grantors. Cecilia, however, argued that the issue was not the *grantors'* intent but Joseph's intent as the *donor* of interests in the properties. According to Cecilia, Joseph placed his sons' names on the titles of property he had purchased with the intent they would take title upon his death, and therefore the deeds were testamentary with respect to the sons, citing *Estate of Franco* (1975) 50 Cal.App.3d 374. The trial court distinguished that case primarily on the ground that the donor paid all of the purchase price for the property (in that case, stocks), but here "the Court has . . . found that with respect to the five . . . properties, all of the grantees named on the five deeds were also jointly and severally liable on the deeds of trust corresponding to each original deed received from a third party." The court surmised that the other deeds *might* have been testamentary if the grantees had not "incurred any personal liability in securing those properties." Both the court's premise and its facts are wrong. Signing a deed of trust does not create "personal liability" (see pp. 5-6, *ante*). Further, that statement is not correct as to all deeds. For example, only Joseph, Pechin, Thien Saik Ng (David), and T.Y took title to the 481 Rollins Road property and signed the deed of trust. In 1983, the four original grantees deeded the property to themselves and to Thien Hwee Ng (Ronald) and Thien Heng Ng (Daniel) as joint tenants, and in 1987, Joseph and Pechin granted their interest in the property "for love and affection" to themselves, to T.Y., Ronald, and David, and their wives, and to Daniel all as joint tenants. The Boone property was similarly reconveyed.

Later in the statement of decision, the trial court further distorts Milowe's letter, stating that "T.Y. sought to have the deed prepared in order to 'ensure the transfer of property to the younger generation [upon Joseph's] death' without making a will. T.Y. projected this expectation onto the joint tenancy deed [Milowe] prepared for him." This is incorrect. Milowe's letter recited an *historical* fact: that it was common practice for *Joseph and Pechin* to place their sons on title "with the idea that this would ensure the transfer of property to the younger generation [upon] their deaths." This was not T.Y.'s instruction to Milowe nor does it "project" any such expectation onto the joint tenancy deed."[10]

Finally, the trial court grapples with the plain language of the 1998 deed for the Second Avenue property, which recites that Joseph, the grantor, holds a one-sixth interest. The trial court discredits this language based on a convoluted argument that was admittedly formulated as a means to effectuate the trial court's interpretation of Joseph's oral wishes.

First, the court found there was an "ambiguity" in the 1998 deed because, although the deed recites that Joseph owns only one-sixth of the property, the "operative portion" of the deed conveys " 'all that real property' " that is described. This so-called operative portion of the deed, the trial court concludes, is controlling because Joseph did not actually own one-sixth but only five-thirty-sixths of the property in 1998, due to the fact

[10] Elsewhere in its decision, the trial court describes the circumstances under which the deeds were prepared as "suspicious" because it was T.Y. who "procured the services of Milowe" and "facilitated" her representation of Joseph. According to the trial court these facts, and the absence of consideration, somehow "implicate a presumption of undue influence and fraud." The trial court, however, made no finding of undue influence or fraud, and also made findings that directly contradict this implication. The court expressly found that T.Y. was acting as *Joseph's agent* and pursuant to his instructions. The court's reliance on *Sparks v. Mendoza* is therefore misplaced. (*Sparks v. Mendoza* (1948) 83 Cal.App.2d 511 [presumption of undue influence arises when a gratuitous gift deed is given by a parent not proficient in English to a child upon whom the parent regularly relies for advice in business matters].)

that he was only a five-sixth owner in 1997. (This was because Pechin owned one-sixth of the property before she died, and upon her death there was no probate.) Therefore, the court concluded, because "[Joseph's] interest in the Second Avenue Property was greater [*sic*] than what was described in the recitals," the conveyancing language—" 'all that real property—' "must control.

But the question before the court was not whether the 1998 deed was technically accurate in describing Joseph's share of the property; nor was the court trying to ascertain what portion of the property had actually been conveyed.[11] The question was whether the deed reflected Joseph's *belief* that the 1997 deed was operative, and therefore Joseph owned only a one-sixth interest in the property. The specially prepared language of the deed—the typewritten portion—showed that Joseph believed he had a one-sixth interest in the property. The "operative language" relied upon by the trial court—that the grantor conveyed " 'all that real property' "—was a preprinted part of the deed, and does not control. With deeds, as with any other contract, " '[t]he primary object of all interpretation is to ascertain and carry out the intention of the parties. [Citations.] All the rules of interpretation must be considered and each given its proper weight, where necessary, in order to arrive at the true effect of the instrument.' [Citation.]" (*Burnett v. Piercy* (1906) 149 Cal. 178, 189.) One such rule of interpretation is that specially prepared language prevails over conflicting preprinted parts of a document. (Civ. Code, § 1651.)

Further, the court's use of Joseph's incorrect description of his one-sixth (rather than five-thirty-sixth) interest in the property as evidence that Joseph really believed he owned *the entire property* makes no sense. It is also belied by the court's own findings.

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[11] For this reason, the court's reliance on *Cecil v. Gray* (1915) 170 Cal. 137 and *MacFarland v. Walker* (1919) 40 Cal.App. 508 is misplaced. In both cases the issue was what property interests had been *conveyed* by a deed. Here, the issue is what Joseph's intent was in signing the 1997 deed, not what Joseph had legally conveyed by the 1998 deed.

Only four pages earlier in its statement of decision, the trial court concluded that because Pechin's estate was never probated, *no one knew until this litigation* that Joseph was only a five-sixth owner of the Second Avenue property in 1997. Accordingly, the actual ownership interests were not known to be different from what was reflected in the 1997 deeds until, at the earliest, 2007.[12]

Alternatively, the trial court concluded the 1998 deed conveyed 100 percent of the Second Avenue property to Cecilia because: (1) Joseph intended Cecilia would receive a "substantial share of his estate"; (2) to that end, Joseph prepared grant deeds in 1998 for several of his properties which, although (mostly) unrecorded, named him and Cecilia as joint tenants as to one-fifth or one-sixth of the properties; (3) if Cecilia received only a one-sixth interest in the Second Avenue property, this would not fulfill Joseph's intentions for Cecilia; and (5) Joseph wanted Cecilia to live in the Second Avenue property until she died, and he did not want his sons to interfere with that right, so if Cecilia obtained only a one-sixth interest in the property when Joseph died, that would not be the result that Joseph wanted.

The court's reasoning is premised on the notion that a decedent's intentions should be given effect irrespective of whether the decedent prepared a trust or a will or otherwise observed the formalities required to accomplish his goals. The law does not support this premise. (Prob. Code, § 6110; *Estate of Howell* (1958) 50 Cal.2d 211, 215.) Joseph's

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[12] The court also credited Cecilia's testimony that Joseph was "shock[ed]" to learn in 1998 that he was not the full owner of the Second Avenue property. Cecilia testified: "[Joseph] didn't talk to me about this deed until . . . he go to City Hall. He was shock. He was shock. [Second Avenue property] is one hundred percent. How come become a 1/6? Originally was one hundred percent." But Cecilia backtracked on this statement after further questioning by the court and counsel. She admitted that she did not read the deed and that Joseph did not explain it to her. He only told her that the "[h]ome is hundred percent for you to stay in the rest of your life." Moreover, earlier in her testimony, Cecilia evinced an understanding that T.Y. had prepared a deed that "already put it into 1/6, so [Joseph] leave it the as is" but told her that his sons had agreed she would have the home "to stay the rest of [her] life."

failure to ensure that all of the 1998 deeds were signed and recorded—which would have effectuated his wishes—cannot be treated as irrelevant in service of the goal of carrying out Joseph's supposed intentions as orally expressed or as reflected in the unsigned and unrecorded 1998 deeds. Probate Code section 6110 is essentially a statute of frauds designed to ensure that the testator's *actual* wishes are carried out and not the wishes as expressed or recollected by those who might benefit. "[T]he policy underlying the traditional *formalities* required by Probate Code section 6110 is to prevent fraudulent dispositions of testators' properties. . . . The antifraud policy is invoked as the reason for strictly following statutory requirements for executing wills. [Citation.]" (*Estate of Brenner* (1999) 76 Cal.App.4th 1298, 1301-1302.) The trial court found that Joseph was averse to preparing a will; that being so, Joseph knew how to prepare and record—or to ensure the recordation of—deeds in order to effectuate his own wishes and the court so found. It was not for the trial court to override a facially valid, recorded deed in order to carry out what the court believed to be Joseph's intent.[13]

In sum, it is my view that the trial court's ruling invalidating the 1997 deeds does not survive scrutiny.

There is, however, one loose end, which is the anomalous 1998 unrecorded deed to the 451 Rollins Road property. In that document, Joseph recites that he is the sole grantor, and he purports to grant to himself and Cecilia, and to each of the sons and their wives (except T.K., who was single) a one-sixth interest in the property in joint tenancy. I have found nothing in the record that appears to explain the discrepancy between the

[13] The trial court, it appears, is speculating that Joseph's intentions at the time of his death in 2007 is reflected in the 1998 deeds. But Joseph's failure to record them (or ensure their recordation) also supports a contrary inference—that Joseph ultimately decided not to give Cecilia anything more than the one-third interest in Oakland plus the one-sixth interest in Second Avenue. As both T.Y. and David explained, Joseph frequently said contradictory things about his *intent*, but ultimately he did what he did, and his actions spoke louder than his words.

1997 deed—by which Joseph receives only a one-sixth interest—and the 1998 deed. Whatever the explanation, the trial court expressly found that this deed was never intended to be effective. "Based on [Joseph's] practice of recording deeds, the Court finds that [Joseph] did not intend for the 1998 deed for 451 Rollins Road to be effective unless it was recorded. Cecilia has failed to prove that this deed was delivered to her or any of the other named grantees, and it is therefore void." The court also found that the deed did not effect a transmutation to community property because it was not delivered to Daniel with the other deeds, and therefore the sons were not given notice, as required by law. By this statement, the court implicitly acknowledges that the 1997 deed *was* valid because the statement presupposes that the sons held title and were entitled to any notice of a transmutation.

It is true that the content of the deed arguably reflects Joseph's *belief* that he still owned 100 percent of the property in 1998; it is equally arguable that Joseph was mistaken or that Joseph simply thought he was accomplishing the same thing he had accomplished with the 1997 and 1998 deeds to the Second Avenue property: convey ownership of the property to himself and his sons as joint tenants and add Cecilia as a joint tenant of his share. Given all these reasonable possibilities, the reference to Joseph as sole grantor in the void 1998 deed is insufficient as a matter of law to overcome the presumption that the 1997 deed effectuated present transfer of title to Joseph and the five sons.

For all of the reasons explained, I would not affirm the trial court's findings and conclusions with respect to the 1997 deeds.

Rivera, J.

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